Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

Saturday, February 26, 1955 Vol. CXIX. No. 9

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

CITY OF SALFORD

Assistant Solicitor

ASSISTANT SOLICITOR required. Salary scale £690 — £900. Commencing salary according to qualifications and experience.

Municipal experience desirable but not essential. Must be good advocate.

Applications, with names of two referees, to the undersigned by March 5, 1955.

R. RIBBLESDALE THORNTON,
Town Clerk.

Town Hall,
Salford, 3.

CITY OF OXFORD

Justices' Clerk's Office

Appointment of Third Assistant

APPLICATIONS are invited for this appointment from male persons experienced in the work of a Justices' Clerk's Office. Applicants should be competent typists ; shorthand will be an advantage; and they should have completed, or be otherwise exempt from National Service.

The salary will be equivalent to the Clerical Division of the National Scales of Salaries, i.e., £495—£545 (by three increments), but this may be subject to adjustment in the event of any national award in respect of Justices' Clerks' Assistants.

The appointment will be superannuable, subject to medical examination, and to one month's notice on either side.

Applications, stating age, education and experience, together with the names of two persons to whom reference may be made, must reach me not later than March 14, 1955.

A. JOHN BROUGHTON,
Clerk to the City Justices.

Town Hall,
Oxford.

COUNTY BOROUGH OF NORTHAMPTON

APPLICATIONS are invited for the appointment of Chief Constable which will become vacant on the retirement on June 30, 1955, of Mr. John Williamson, C.B.E. Further particulars and form of application may be obtained from me. Closing date March 19, 1955.

C. E. VIVIAN ROWE,
Town Clerk.

Guildhall, Northampton.

BOROUGH OF GILLINGHAM

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable experience in Municipal Law and practice for the above appointment.

Salary £1,350 per annum, rising by annual increments of £50 to £1,550 per annum. The terms of appointment will be in accordance with the Recommendations of the Joint Negotiating Committee for Certain Chief and Other Officers, and the successful applicant will be required to pass a medical examination.

Applications, stating age, full details of experience and qualifications, and the names and addresses of three persons to whom reference can be made, are to be sent to me not later than Tuesday, March 1, 1955, together with 12 copies thereof. Applicants selected for interview may be required to supply 20 additional copies of their applications.

Canvassing, directly or indirectly, will disqualify.

FRANK HILL,
Town Clerk.

Municipal Buildings,
Gillingham, Kent.
February 11, 1955.

ESSEX PROBATION COMMITTEE

Appointment of Senior Probation Officer and Probation Officers

APPLICATIONS are invited for the appointment of a Senior Probation Officer and for male probation officers.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointments will be subject to the Probation Rules, 1949 to 1954, and the salaries will be according to the scale prescribed by those Rules with the addition in the case of the Senior Officer of an allowance of £75 a year.

Applicants should be able to drive a car.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than 14 days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

COUNTY BOROUGH OF GRIMSBY

Appointment of Children's Officer

APPLICATIONS are invited from suitably qualified women for the appointment as Children's Officer for the County Borough of Grimsby. The salary paid will be in accordance with the present A.P.T. Grade V of the National Scheme of Conditions of Service (£750 × £30—£900).

The appointment will be superannuable, and the successful candidate will be required to pass a medical examination. Further particulars may be obtained from the undersigned to whom applications must be forwarded not later than 14 days after the date of publication of this advertisement. No testimonials need be enclosed with the application but the applicant should forward the names of three persons to whom reference can be made.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Grimsby.

CUMBERLAND MAGISTRATES' COMMITTEE

APPLICATIONS are invited for the post of Senior Assistant to the Clerk to the Justices for Whitehaven and Workington. Salary £600 × £25 — £725 per annum. Thorough knowledge of work of a Justices' Clerk's Office required. Post pensionable; medical examination. Applications, stating age, qualifications and experience, with the names of two referees, must be sent to the undersigned by March 9, 1955.

G. N. C. SWIFT,
Clerk to the Magistrates' Courts Committee.

The Courts,
Carlisle.

LANCS. No. II COMBINED PROBATION AREA

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of serving Probation Officers.

The appointment will be subject to the Probation Rules, 1949-54, and the salary in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination for the purpose of superannuation.

The person appointed will be assigned to Prescot Petty Sessional Division and will be stationed at Prescot.

Applications, giving details of age, experience and present position, together with not more than two recent testimonials, to be sent to the undersigned not later than March 8.

W. McCULLEY,
Secretary to the Probation Committee.

Town Hall,
St. Helens.

BOROUGH OF EALING

ASSISTANT SHOPS ACT INSPECTOR required. Salary in accordance with Grade A.P.T. II (£560—£640 per annum, plus London Weighting). N.J.C. service conditions. Particulars from Town Clerk, Ealing, W.5. Closing date March 14, 1955.

Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
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NOTES OF THE WEEK

Evidence of a Clergyman

In the Irish Rebublic, we believe, the law is that a communication made to a priest in his capacity of spiritual adviser is privileged. This is not the law in this country, where confidential communications other than those passing between a client and his legal advisers are not privileged from disclosure. The privilege does not extend to communications between a party and his medical or spiritual adviser. However, where negotiations " without prejudice " are proceeding in relation to a dispute, letters and oral communications, may be privileged and in *McTaggart* v. *McTaggart* [1948] 2 All E.R. 754, this principle was applied to negotiations before a probation officer. The privilege is waived if they both give evidence on what was said (*see* 13 *Halsbury* 703 and 726 and Supplement).

The position of a clergyman who was concerned in the possible reconciliation of husband and wife was considered by Sachs, J., in *Henley* v. *Henley and Bligh* (*The Times*, February 18). There were cross petitions alleging adultery. Counsel for the husband had sought to call as a witness a clergyman of the Church of England, to give evidence about certain statements said to have been made to him by the wife.

On behalf of the wife the claim had been made that this evidence, being that of a conciliator, was privileged. This claim, said the learned judge, was challenged on the ground that a distinction was to be made between the situation in which parties went to and consulted a probation officer or other mediator in the course of negotiations for a reconciliation, and the present case in which, with no actual negotiations pending, a third person had voluntarily attempted to mediate between the parties. In matrimonial matters the State was an interested party, and as such was more interested in reconciliation than divorce. It was for this reason that intermediaries and conciliators had been held to be persons whose evidence was privileged. Were it otherwise parties who were negotiating a reconciliation would be afraid to be frank.

The position in this case was that the vicar, who by reason of his position was a person trusted by his parishioners, very properly took certain steps when the estrangement of the husband and wife became apparent. He went to the husband as a conciliator and was accepted as such; he then went to the wife in the same way. He (his Lordship) could see no distinction between the position of the vicar in acting as he had done, and the position which would have arisen if he had been asked to go to the parties, in which case his evidence would clearly have been privileged.

A Question of Appeal

Our note under this heading at p. 95, *ante*, is the subject of a letter which we have received from a learned correspondent who takes a view different from our own. He writes: "As the proceedings are by way of information are they not governed by s. 13 of the Magistrates' Courts Act, 1952, which provides that '(1) On the summary trial of an information . . . (2) The court, after hearing the evidence and the parties, shall convict the accused or dismiss the information.' There appears to be no ambiguity here; proceedings begun by information must end in either a conviction or dismissal."

On the face of it, this argument seems unanswerable, but we are still left with the difficulty of interpreting s. 6 (5) of the Criminal Justice Act, 1948. If there is a conviction, why is it necessary to say that the fine imposed shall be deemed to be a sum adjudged by a conviction ? In order to attach a meaning to s. 6 (5), *supra*, we think it must be taken to be an exception to the rule that an information must result in conviction or dismissal. It is to be observed that s. 6 (5) avoids the use of the word " offence " and refers to " failure to comply."

It is obviously a debatable point, which may one day be decided by the High Court. We have not suggested, and we certainly would not suggest that a magistrates' court should decline to have anything to do with an appeal in such a case. The right course would be to leave the matter to be dealt with at quarter sessions.

Driving "Under the Influence"

After being told by a police officer that the number of drivers convicted of driving while under the influence of drink in one district was the highest in his experience, the chairman of the licensing justices said that if imprisonment was the only way of checking this kind of offence the justices would have to exercise their power without hesitation, however unpleasant the duty. He is also reported as saying that it was up to licensees to see that motorists did not get enough drink to make them a danger to other users of the road.

The view is widely held that magistrates are inclined to be too lenient in dealing with this offence, both by refraining from passing sentences of imprisonment and by not exercising their powers of disqualification drastically enough. Disqualification for a year is compulsory, in the absence of special reasons, but there is always the power to make the period longer, and in bad cases a longer period might prove a deterrent as well as protection to the public.

Licensees and their servants should certainly do all that they can but in a busy public-house they cannot be expected to know which customers are driving cars and which are not. Many a man who has had enough drink to make him a little less careful or competent, and therefore unfit to be in charge of a car, could walk home in safety, perhaps a little unsteadily, but without causing danger or annoyance to anyone else. The publican would probably have noticed nothing about him to give ground for refusing to serve him. He might be disposed to suggest to a customer, especially a young man or woman, that it was time to stop, if it was clear that the customer needed little more to make him drunk. That would be to his credit. It would be very difficult, however, to determine when to draw the line in judging when the customer ought to stop drinking because he was about to take charge of a car. He would always refuse a customer who was obviously already under the influence of drink, but there must be many cases in which the fact does not manifest itself until the driver has begun to drive.

Statement of Case by Justices.

It was made plain by the High Court in *Roberts* v. *Evans* (1949) 113 J.P. 137, that when a case is to be stated it is the duty of the justices to see that it is stated correctly and although it is usual and convenient to allow the parties to submit a draft, the responsibility for its final form is that of the justices. If the justices are satisfied that a draft submitted by the appellant fully states the facts according to their findings, there is no obligation on the justices' clerk to submit the draft to the respondent, *Spicer* v. *Warbey* [1953] 1 All E.R. 284; 117 J.P. 92. Nevertheless it is customary to allow both parties to take a hand, if they wish, in preparing the draft, and there is much to be said for the practice.

An instance of departure from the ordinary procedure came before the Divisional Court in *Cowlishaw* v. *Chalkley* [1955] 1 All E.R. 367. An information had been dismissed by a magistrates' court after the defendant had been sworn but had not yet given evidence, the justices stating that in their opinion no case had been made out by the prosecution. At the request of the appellant they stated a case, but they did not submit the draft to the parties. Although, as appeared when the case came before the Divisional Court, no contentions had been put forward by the parties in the magistrates' court, the case purported to state the contentions of the parties. Neither had the defendant submitted that there was no case for him to answer.

The Court sent back the case to be heard by a fresh bench of justices. The Lord Chief Justice said that as a rule it is better practice, though it could not be insisted on, that where justices agree to state a case, if they state it themselves or cause their clerk to draft it, it should be submitted to both parties, and in case of any complication it should be left to the parties themselves to draft the case and submit it to the justices for their consideration.

Sentences for Post Office Thefts

The offence of stealing a postal packet in course of transmission is always serious, and when committed by a servant of the Post Office it takes on a still graver character. Under s. 57 of the Post Office Act, 1953, it may in certain circumstances be punished by imprisonment for life. Cases, however, vary in gravity, and Parliament has provided that such an offence can be tried summarily by consent in accordance with the provisions of s. 19 of the Magistrates' Courts Act, 1952. Naturally, justices will consider carefully whether they are justified in giving the defendant the option of a summary trial for an offence which is often serious.

It is within living memory that time was when all such cases were not only sent for trial but also almost invariably visited by penal servitude. Then the severity of the law was relaxed to the extent that magistrates would sometimes deal summarily with a dishonest postman, reminding him that he was fortunate not to be committed for trial and in all probability sent to penal servitude. Nowadays more cases are dealt with summarily, and with some leniency, but others are rightly considered to be too serious and are sent for trial.

The Lord Chief Justice, in the Court of Criminal Appeal on February 14, made observations on these offences by postmen when the Court reduced a sentence of two years, passed at quarter sessions, to nine months. The defendant, one Mutch, was a young postman.

Lord Goddard said that four other charges had been taken into consideration. He could remember the days, a long time ago when no man who stole letters ever received a sentence of less than five years' imprisonment; that had been gradually brought down. In view of the applicant's previous good character, the fact that he had recently married, and that he was aged only 21, the Court were justified in extending to him considerable leniency.

The trouble about all such offences is that they are a breach of trust and that they may cause anxiety and distress through the non-delivery of letters.

UFAW

These initials, which stand for the Universities Federation for Animal Welfare, are becoming more familiar as the work of the Federation becomes better known. Its objects are humane, but it does not fail to be realistic, and we have found no trace of false sentiment in its publications. It has the benefit of the help of some distinguished scientists.

At a symposium held recently, Major C. W. Hume, the director of the Federation, had for his subject the humanitarian aspect of rabbit control. Dr. Jean Vinter explained the evolution of a humane method of killing unwanted cats and dogs, which is now in use at some of the largest dogs' homes, and which produces instantaneous unconsciousness and death within 1½ seconds. Dr. W. M. S. Russell dealt with humane experimental techniques in laboratories. The Home Office, it was said, limits the

severity of procedures, but within these limits improvements are continually taking place. It is hoped to study the psychological factors affecting attitudes to animals, the problem being not one of conscious cruelty or good intentions but rather of understanding. Treatment of animals is greatly affected by the extent to which their needs and fears are understood.

The Housing and Rent Repairs Act

The Housing and Rent Repairs Act, 1954, was given the Royal Assent on July 30, 1954. At the time when it passed through the House this Act was variously named "a mouldy turnip" and "a gold-mine" for the property-owners by the opposition whose principal spokesman was Mr. Bevan.

The property-owners as a body would probably think that the "mouldy turnip" was the more apt of the two descriptions. Some are even of opinion that the provisions of the Act relating to the rent increase in respect of repairs are in danger of breaking down completely and it has been said that only five *per cent.* of owners of good house property have been advised by their expert advisers to apply for the increase on grounds that repairs under the terms of the Act are simply not economic.

It will be recalled that one of the principal objects of the Act was to encourage the repairs of private property and to enable house-owners who brought their property into good general repair and kept it in that condition to obtain a repairs increase of rent. The Act was particularly aimed at the repairs of the older properties.

The critics say that the repairs increase is more than absorbed by the expenses of repair. They further think that the "certificate of disrepair" procedure exerts a strong deterrent effect upon landlords. Under s. 26 of the Act after service of a notice of increase for repairs the tenant may apply to the local authority for a certificate of disrepair and if they grant his application then the landlord is not able to recover the increase. The criteria which the local authority have to apply are two: (1) that the dwelling-house is in good repair, and (2) that it is reasonably suitable for occupation having regard to the matters specified in s. 9 (1) (*b*) to (*h*) of the Act. These latter provisions embrace the following: stability; freedom from damp; natural lighting; ventilation; water supply; drainage and sanitary conveniences and facilities for storage, preparation and cooking of food and for the disposal of waste-water.

Some local authorities it appears are applying these criteria with an extreme strictness which could not have been contemplated by the Act. Such matters as chipped paint-work, broken sash-cords, cracked wash-basins and window panes have been held to justify the granting of a certificate of disrepair!

One critic has alleged the case of a local authority who have issued a certificate merely on grounds of shared lavatory accommodation!

Another criticism relates to a restrictive attitude on the part of local authorities towards improvement grants. Many are unwilling to go to the limits permitted by law but are prepared to advance only a fraction (sometimes as low as 20 *per cent.*) of the improvement grants to owners who wish to renovate their property.

If the repairs and improvement provisions of this Act are going to work properly (and it is essential that they should) then it looks as though there will have to be a considerable overhaul of the Act.

The De-requisitioning Problem

Although World War II came to an end nearly 10 years ago there are still 62,000 houses held under requisition and which contain about 90,000 families.

The hard core of the problem is to be found in the London area where there are still nearly 50,000 houses under requisition. The worst boroughs are Wandsworth (5,628 families in requisitioned houses) and Camberwell (4,890 families) but Lambeth, Hackney and Lewisham also show a serious requisitioning problem.

The Government are impressed with the necessity for bringing this position to an end as soon as possible and have, accordingly, produced the Requisitioned Houses and Housing (Amendment) Bill which should receive a second reading shortly. The new Bill, which is the product of agreement between the Minister and local authority associations, has three main objects:

(1) To bring to an end the use of requisitioning powers for housing purposes within a five-year period.

(2) To avoid thereby causing hardship to the families now living in these houses.

(3) To secure the earlier release of requisitioned houses whose owners have urgent need of them.

It is a fact that there has in the past been little or no incentive to local authorities to de-requisition these properties and the new Bill seeks to put this right. The Bill, accordingly, transfers possession of houses already requisitioned from the Minister to the local authorities who are given the right to use them for housing purposes up to March 31, 1960, but no longer (cl. 1).

Various financial spurs are provided to local authorities by the Bill. In the first place after April 1, 1956, they will be required to bear 25 *per cent.* of the cost. (Previously the Exchequer bears the whole amount.)

The Minister is also empowered to make additional grants to local authorities in areas where the burden on the rates might otherwise be excessive, provided that he is satisfied that the authority concerned has taken all reasonable steps to reduce the number of requisitioned houses which it retains (cl. 9, 10 and 11).

When all is said and done, however, the families who are at present housed in the requisitioned properties still must be looked after. Local authorities have, therefore, been asked to reserve (as before) a proportion of their new council houses for re-housing the occupants of requisitioned dwellings.

In London and one or two other places, however, the position is so bad that even at the present rate of building (348,000 houses a year) it will not be possible to provide alternative accommodation for all the occupants of requisitioned buildings in less than 10-15 years.

Accordingly the Bill devises various methods by which it is hoped to enable occupants to go on living in requisitioned houses by consent of the owners. These methods include the acceptance of occupants as statutory tenants, and the securing of leases of the properties or their purchase by local councils. No question of compulsory purchase arises.

The Bill also enables the release of requisitioned houses before the end of the five-year period in certain circumstances. These include: (*a*) Dwellings falling vacant (cl. 3), (*b*) owner-occupation (cl. 5) on "greater hardship" terms, (*c*) cases of severe hardship (cl. 6), and (*d*) where an owner wishes to modernize a requisitioned house or to convert it into flats and is prepared to offer tenancies to people nominated by local authorities.

AMENDMENT OF ADOPTION ORDERS

In *R.* v. *Chelsea Juvenile Court Justices* (*in re an Infant*) [1955] 1 All E.R. 38, an interesting point was raised as to the scope of s. 21 of the Adoption Act, 1950. It appears that a woman took a child into her care in 1949 and obtained an adoption order in respect of him in 1951 at the Chelsea juvenile court. She had recently applied to the Chelsea juvenile court to amend the order on the ground that school reports and medical evidence gave reason to believe that the child was two and a half years younger than the age given in the adoption order. The juvenile court refused to entertain the application, on the ground that it had no jurisdiction, and the adoptive mother applied to the High Court for an order of *mandamus*, which was granted.

Section 21 of the Adoption Act, 1950, under which the juvenile court was asked to act, is the last section of Part I of the Act and the last of a group of sections (ss. 17-21) which have the general heading " Registration of Adoption Orders." Section 21 itself is headed " Amendment of orders and rectification of Registers." Subsection (1) is as follows :

" The court by which an adoption order has been made . . . may, on the application of the adopter or the adopted person, amend the order by the correction of any error in the particulars contained therein. . . ."

The subsection goes on to require the prescribed officer to communicate the amendment to the Registrar-General for the correction of the Adopted Children Register.

It appears that the juvenile court took the view that on the face of it the section does not give a general power to amend adoption orders, but limits the power given to the correction of errors in the particulars given in the order ; and presumably the arguments of counsel for the justices that s. 21 was merely a " slip clause " was based on this limitation, and on the side-note and the place given to the section in the Act. Section 21 does not specify what are the " particulars " which may be amended, and the only other place in which the word is used in this part of the Act is in s. 18 where it refers only to the particulars which are embodied in the schedule to the statutory form of order—date and country of birth, name and surname of child, sex of child, name and surname, address and occupation of adopters, date of adoption and description of court. These " particulars," however, depend on the statements made in the body of the order, and if they alone were amended the correction might leave a discrepancy between the body of the order and the schedule.

The Divisional Court, however, held that the justices were wrong. Section 21 (1), the Lord Chief Justice said, was in the widest possible terms. " It has been suggested to us that that is only what is called a slip rule, but those words are not appropriate to a slip rule at all. A slip rule applies where the court makes an order and by a slip the order does not represent what the court has said. . . . Power is obviously being given in this subsection to correct particulars which in the case of children of unknown parentage may easily be wrongly inserted in an order."

The word " error " does of course convey to the legally trained mind something different from the meaning which the ordinary layman would give it. The old writ of error and court of errors may linger in the mind of a lawyer so as to make him think of an error as any wrong judicial decision and not merely one which is due to inadvertence: but to the layman nowadays " error " and " slip " are practically synonymous.

The amendments sought by the applicant were in fact much more radical than would be covered by " the correction of an error in particulars " in the ordinary sense of the words. It was asked that the words " a foundling " and the recital of the child's identity with a child named in the Register of Births should be deleted, and that January 1, 1941, should be substituted for August 1, 1938, as the probable date of birth. The effect of the application was therefore to ask the court in 1954 to say that the child in respect of whom the adoption order had been made in 1951 was not the child in respect of whom it found, on the evidence then before it, that it was making an order, but some other child not identifiable—or at any rate not identified—with any entry in the Register of Births.

As the Lord Chief Justice pointed out in his judgment, " the child adopted was the child that this lady who made the application had in her custody and whom the justices could see and no doubt did see." There can be no doubt that an adoption order is made in respect of a flesh-and-blood child, and not a paper-and-ink entry in the Register of Births. But it must not be forgotten (and this does not seem to have been fully argued) that there are certain statutory prerequisites to the making of an order. Consents have to be obtained or dispensed with, and a statement that all the necessary consents have been obtained or dispensed with is embodied in the statutory form of order. The question whose consents should be obtained or dispensed with, and who should be made respondents to the application, depends to a considerable extent on whom the child is thought to be—in other words, on the identification of the flesh-and-blood child with the paper-and-ink entry. In the case of a foundling, for instance, there will be no parents whose consent can be sought, and the only consenting party will be the local authority in whose care he is.

In the present case the original application was presumably dealt with on that basis, and the London County Council was represented in the proceedings before the High Court. But it does not seem to have been pointed out that if in such a case the order were amended so as to delete the identifying clause and the statement that the child was a foundling, the clause in the order which said that the necessary consents had been obtained or dispensed with would be left in the air. If an adopted child is not after all the foundling referred to in the Register of Births, he must be some other child—perhaps a child whose parents were alive at the time when the order was made. The consent of those parents will never have been sought: the consent of the local authority, which has been given, may not have been necessary.

One point which was raised in the *Chelsea* case seems to have been without substance. Reference was made to subs. (2) of s. 21, which gives specific power to amend orders made before 1950 by inserting the country of origin and a probable date of birth. The Lord Chief Justice said that the court had not explored fully the position before 1950, but thought the reason for this provision was that there may have been doubt about the power to do this under the old Act. Examination of the previous statutes shows this to be undoubtedly the right view. The Act of 1926 contained no provision for a statement in the order of the country of origin, or of a probable date of birth. When such provision was made in the Act of 1949 it was necessary to make it possible to bring pre-1950 orders into line in this respect, and the consolidating Act of 1950 provides for this in s. 21 (2) by

making it clear that these particulars may now be inserted by way of amendment even though they could not have been inserted when the order was made.

As was pointed out in the *Report of the Departmental Committee on Adoption* (1954, Cmd. 9248) there is no specific statutory provision for appeals from a magistrates' court in adoption matters: though Case Stated, *certiorari*, prohibition and *mandamus* are available where appropriate. The committee was of the opinion (para. 32) that the grant or refusal of an adoption order was of too important a nature to justify the withholding a right of appeal, and that there should be an appeal by way of rehearing before two judges of the Chancery Division. The arguments for some provision are cogent, though it may be thought that some time limit for appeal would be desirable in order to ensure that the permanent nature of adoption should not be undermined: it would be disastrous, for instance, if parents who had abandoned a child were placed in the position of being able to threaten to take him back years later when he had become settled in his adoptive family.

Meanwhile the need for a right of appeal seems to have been to some extent relieved by the revelation in *R.* v. *Chelsea Juvenile Court Justices* of the scope of s. 21. Only a part of the ground is covered, because only the adopter or the child may apply for amendment: but it appears that it would be possible, for instance, for one identification to be substituted for another or for a child who was not identified at the original hearing to be identified at some later date with a child named in the Register of Births: and this could be done on an *ex parte* application under r. 25 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, without serving notices on the persons whose consent would have been required at the original hearing.

The number of cases in which these consequences would follow is of course extremely small. In the majority of cases there is never any question of the child's identity. But in the few cases it is useful to know that such a simple and convenient remedy is available.

PROSTITUTION AND THE LAW:
A LATE EIGHTEENTH CENTURY VIEW

By STANLEY FRENCH

Were he alive today Patrick Colquhoun would have been an eager witness before the Committee on Homosexuality and Prostitution, and some of his opinions and suggestions as apposite as they were when he first made them at the end of the eighteenth century. A prolific (and prolix) writer on the subjects of crime and police he was no mere theorist but one of the first stipendiary magistrates in London and shares with John Harriott the right to be called the progenitor of the Thames Police.

His views on prostitution are set out in his *Treatise on the Police of the Metropolis*, which went through six editions between 1796 and 1806 and had great influence on the development of police forces in England and abroad.

He was very concerned about the flagrant disregard of decency in the London of his time. According to him the walks of prostitutes, which used to be confined to one or two streets, had spread everywhere, even into the city, whilst the theatres were often the scene of such lewd behaviour by some of the audience, particularly in the boxes, that respectable people were subject to considerable embarrassment, and men hesitated to take their families there. Family parties also kept away from some of the places of summer resort, particularly tea gardens, which Colquhoun thought ought to be admirable sources of that occasional amusement which "policy and reason must admit is necessary for the health and comfort of the lower middle classes." The behaviour of the prostitutes who frequented such places had led to some of them being closed.

In Colquhoun's day the science of statistics was in its infancy, and he had little beside his own experience and observation to go on, but he was always ready to hazard an estimate of the numbers engaged in a particular form of crime.

He estimated the prostitutes in London to number about 50,000, but included in that figure 25,000 he believed to be living only partly by prostitution, amongst them an uncertain number of "low females who cohabit with labourers and others without matrimony." He divided the 25,000 full time prostitutes into three classes :

(1) Well-educated women, whose numbers "it is earnestly to be hoped" did not exceed 2,000;

(2) Persons above the rank of menial servant 3,000; and

(3) Women of the menial servant class "numbering in all parts of the metropolis, including Wapping and the streets by the river" 20,000. These, he suggests, had resorted to prostitution for a livelihood "from love of idleness and dress, with the (in this case) *misfortune* of good looks," sometimes after seduction and loss of character, sometimes solely from inclination, a summary of the reasons why the supply of prostitutes never fails which can be applied to all ages and all races.

If Colquhoun's estimates are fairly accurate there may have been far more prostitutes in his London than in ours, despite the great increase in population, for in the whole of England and Wales in 1953 there were only 10,000 offences by prostitutes.

It may be that his estimates are exaggerated, but it does not matter if he is a few thousand out, as he himself said; the evil was of alarming magnitude. Colquhoun believed that "to prevent its existence, even to a considerable extent, in so great a metropolis as London, is as impossible as to resist the torrent of the tides. It is an evil which must be endured while human passions exist," but he was nevertheless convinced that much could be done to reduce the evil.

The main purpose of his treatise on police was to show the necessity, and to advocate the establishment, of a unified police force for the metropolis, and he argued that the formation of such a force would make it possible to keep the streets and places of public resort decent by confining the activities of prostitutes to a few streets and controlling their behaviour. It would also ensure the proper enforcement of existing laws by making it the duty of the police to institute prosecutions instead of leaving it to no one in particular.

He wanted to strike not only against the prostitutes themselves but also at the people who made money out of them by letting them rooms, so he advocated the appointment of "a select body of discreet officers," under the central police

authority, with power to arrest every woman obviously engaged in prostitution and to take her to her home, where the name of the landlord or other person to whom she paid rent was to be ascertained and registered, together with the names of other lodgers, and thereafter every time a woman in the house solicited in the street the landlord was, upon proof of an overt act, to be fined 10*s*. the first time and then a sum increasing by 5*s*. for each fresh offence. This scheme would certainly make it difficult for prostitutes to find permanent accommodation and would provide a weapon against the landlords who, in present day conditions, let their properties in single rooms to prostitutes but are careful to avoid giving the slightest indication that they know anything at all of the occupation of their tenants.

Colquhoun also sought to make soliciting in the street more difficult by proposing that the police should have the power to arrest any man who accepted overtures from any female, or made them to her, and either to bail him or to keep him in the watch-house until he could be brought before a magistrate when he was to pay a penalty of 20*s*. upon proof that he had accepted or made an overture.

Once it is accepted that prostitution should be suppressed there is a good deal to be said for punishing those whose desire brings it into existence, as drug-takers are punished as well as drug-traffickers, but the practical difficulties are obvious. The most innocent meeting might assume an unlawful aspect in the eyes of an enthusiastic policeman, so that husbands and wives would hesitate to greet one another in the street, whilst the opportunities for bribery would be much increased.

Colquhoun did not think that prohibition and punishment were the only ways of attacking the problem. He was a charitable man, much concerned about the conditions which bred crime and active in trying to alleviate hardship amongst the poorest inhabitants of London, especially by the establishment of soup kitchens. He believed that some women were driven on to the streets by need, and he also believed that many who had become prostitutes might yet be restored to respectability if they were given help. The important thing, as he saw it, was to catch them young. " It is in the first stage of Seduction, before the female mind becomes vitiated and depraved that Asylums are most useful," he wrote. " If persons in that unhappy situation had it in their power to resort to a medium whereby they might be reconciled to their relations, whilst uncontaminated by the vices attached to General Prostitution, numbers who are now lost might be saved to Society."

He therefore propounded a scheme which in some respects anticipated the modern probation system. Twelve or more " sensible and discreet matrons " living in various parts of the town were to be appointed to provide temporary accommodation for every " unfortunate female who has been seduced " wishing to be re-established with her friends. The matron was to try to effect a reconciliation between the girl and her family, and if that proved impossible she was to find her work.

In addition, " houses of industry " were to be set up " with large kitchens for the purpose of preparing wholesome and nourishing food at a cheap rate," which would accept any woman who applied provided she gave a true account of her life (he does not indicate how truth was to be distinguished from falsehood), agreed to submit to the discipline of the establishment and was prepared to work. These houses were to be under the control of more " discreet and sensible matrons " who were to organize work such as washing and ironing which could be brought in from outside, and from which they were to get a share of the profits in addition to a " moderate salary." All the matrons were also to get a bonus for every woman who at the end of a year was either living with her family or settled in a job. Such a payment by results would hardly commend itself today, however much some probation officers would benefit by it, and in the corrupt conditions of the eighteenth century it would have given ample opportunity for fraud.

Colquhoun's only other suggestion, apart from a rather vague proposal for the censorship of plays and ballads, is that justices should have power to deal with brothel-keepers summarily. The procedure under 25 Geo. 11, *caput* 36 was so cumbersome that it is not surprising that prosecutions were few and far between; it required two persons paying scot and lot to enter into a recognizance before a justice to prosecute on indictment and a constable could not take action on his own.

One gets the impression that Colquhoun would have liked to have recommended the frank official acceptance of prostitution as a necessary evil which must, however, be strictly regulated, for he praises the licensed house system of Holland and Italy and is particularly impressed by the nautch girls of India, with whom, he says, " under certain circumstances an indiscriminate intercourse is permitted. Their morals, however, are otherwise strictly guarded, and they are taught singing and dancing, exhibiting at public entertainments and even assisting at religious ceremonies." (It is interesting to note that Colquhoun's fellow magistrate at Thames, John Harriott, in a valedictory letter to a son who was going to India recommended him to make use of the nautch girls in preference to early marriage or living with a native woman.)

Colquhoun hesitates to put forward a plain proposal for licensed prostitution, however, and contents himself with saying that although he is well aware that he treads on tender ground in suggesting any measure which has the appearance of giving public sanction to female prostitution, he does believe that " a prudent and discreet regulation of prostitutes in the great metropolis would operate powerfully, not only in gradually diminishing their number," but also in keeping streets and public places decent and seemly.

He wrote in a very different age from ours but human nature has not changed with our mode of life and methods of transport. The problem of prostitution is still the same, and the ground upon which the present committee has to tread is still as tender as it was a century and a half ago.

ADDITIONS TO COMMISSIONS

BUCKINGHAM COUNTY

John Hartley, Wyestoke, Farnham Royal, Bucks.
Anthony Horatio Packe, Tile House, Dropmore Road, Burnham.
Mrs. Alice Janet Routly, Lower Woodend House, Medmenham, nr. Marlow.
Charles David Evelyn Skinner, Hare Cottage, Harewood Road, Chalfont St. Giles.
Mrs. Ethel Eleanor Scott-Picton, 14, Warwick Avenue, Slough.
Frank Cornelius Stevens, Greencroft, Copperkins Grove, Chesham Bois.
Major Ralph Bruce Verney, Claydon House, Bletchley.
Mrs. Winifred Leyton Wood, Redgate, Woodside Avenue, Beaconsfield.

GUILDFORD BOROUGH

Mrs. Cicely Keown, Stringers Barn, Worplesdon, Surrey.

HARROGATE BOROUGH

Frank Barrett, 19, Park View, Harrogate.
Arthur Robinson Boddy, 42, Swarcliffe Road, Harrogate.
Mrs. Eleanor Alice May Prosser, 39, Harlow Oval, Harrogate.
Albert Victor William Henry Milton, 14, Prospect Place, Harrogate.
Mrs. Marion Schofield, 33, Milton Lane, Harrogate.
Harold Ward, 27, Torrs Road, Harrogate.

IMPROVEMENT GRANTS

By LORD MESTON, *Barrister-at-Law*

The provisions of the Housing Act, 1949, relating to " improvement grants " for the conversion or improvement of houses have been amended in several material respects by the Housing Repairs and Rents Act, 1954. Those provisions are in no sense complicated, but they involve a number of details, and it may be useful to marshal those details in an orderly fashion.

Improvements by local authorities themselves—The Minister may approve " improvement proposals " submitted to him by a local authority, for—(*a*) the provision of dwellings by the authority by means of the conversion of houses or other dwellings ; (*b*) the improvement of dwellings by the authority. The Minister is empowered to make a contribution out of moneys provided by Parliament towards the annual loss likely to be incurred by a local authority as a result of giving effect to approved improvement proposals (s. 15 (1) of the Housing Act, 1949).

Before approving any " improvement proposals " by a local authority the Minister must be satisfied that the dwellings will provide satisfactory housing accommodation for a period of not less than 15 years from the completion of the conversion or improvements, and that all dwellings will conform with such requirements with respect to their construction and physical condition and the provision of services and amenities as may be specified by the Minister (s. 15 (2) of the Housing Act, 1949, as amended by s. 16 (1) of the Housing Repairs and Rents Act, 1954).

The requirements which the Minister has specified for a dwelling in respect of which an " improvement grant " is to be made are contained in circular 36/54 issued by the Ministry of Housing and Local Government, dated April 20, 1954.

Improvements by Private Persons—A local authority may give assistance in respect of—(*a*) the provision of dwellings by a person other than a local authority or county council, by means of the conversion of houses or other buildings; (*b*) the improvement of dwellings by such a person ; by way of making an " improvement grant " in respect of expense incurred for carrying out the works of conversion or improvement, known as " improvement works," if an application in that behalf is made before the improvement works are begun (s. 20 (1) of the Housing Act, 1949).

An application for an "improvement grant" must contain full particulars of the improvement works proposed to be carried out, with plans and specifications and estimates of expenses. Where the application relates to the provision or improvement of more than one dwelling, the estimate of expenses must specify the proportion of expenses attributable to each such dwelling (s. 20 (2) of the Housing Act, 1949). Estimates of expenses for improvement works may include the cost of employing an architect, engineer, surveyor, land agent, or other person in an advisory or supervisory character (s. 16 (5) of the Housing Repairs and Rents Act, 1954).

Before approving an application for an " improvement grant " the local authority must be satisfied that (*a*) the dwellings will provide satisfactory housing accommodation for a period of not less than 15 years from the completion of the works, (*b*) that the dwellings will conform with such requirements with respect to construction, physical condition, and provision of services and amenities as may be specified by the Minister, (*c*) that the applicant has a freehold or a lease with an unexpired period of at least 30 years or a period equal to that for which the dwelling concerned will provide satisfactory housing accommodation whichever is the shorter. This does not apply where the land was sold or leased by the local authority under s. 9 of the Housing Act, 1949 (*see* s. 20 (3) of the Housing Act, 1949, as amended by s. 16 (1) (2) of the Housing Repairs and Rents Act, 1954).

Applications for "improvement grants" to private persons are only entertained (*a*) where the application relates only to the provision or improvement of a single dwelling, the amount of the estimated expenses is not less than £100; (*b*) in any other case, the proportion of the expenses attributed to each dwelling is not less than £100 (s. 20 (4) of the Housing Act, 1949). Therefore in the case of conversions the minimum is £100 per dwelling produced.

The amount which may be paid by a local authority to a private applicant is limited to a maximum of £400 or half the expenditure, whichever is the less, for each dwelling provided or improved by the works (*see* the Housing (Improvement Grants) (Expenses) Regulations, 1954, S.I. 1954, No. 478). The local authority, with the concurrence of the Minister, may be empowered in a particular case to increase the maximum amount of the improvement grant (s. 16 (4) of the Housing Repairs and Rents Act, 1954). It will be noted in an admirable booklet " Grants for Improvements and Conversions " prepared by the Ministry of Housing and Local Government, that there is no means test for applicants for improvement grants. And the grant is paid either when the work is completed or by instalments while it is being carried out, whichever the owner prefers. It may frequently happen that a landlord finds it necessary to borrow money in order to carry out works on his property. In this connexion local authorities have power under s. 4 of the Housing Act, 1949, to make advances for a number of matters including altering, enlarging, repairing, or improving houses. The Minister of Housing and Local Government issued on May 4, 1954, a circular (No. 42/54) to all local authorities and county councils in England and Wales, reminding them of their powers under s. 4 of the Housing Act, 1949, and urging them to make use of those powers.

The above-mentioned new provisions abolishing any restriction on the amount of expenditure which may attract an improvement grant are very useful. Previously, a most unsatisfactory position was liable to arise. The former regulations laid down £800 as the maximum expenditure to attract a grant. If the total expenditure was £800 the applicant was thus eligible for a grant of £400. If, however, the total expenditure was more than £800, say £810, then he was not entitled to a grant of £400; he was entitled to nothing at all. But that position is now altered by s. 16 of the Housing Repairs and Rents Act, 1954. A total expenditure of more than £800 no longer makes a person ineligible for a grant, but the amount of the grant remains the same as before: that is to say, a maximum of £400 or half the cost, whichever is the lower.

Where an improvement grant is made to a private person it is the duty of the local authority to fix the maximum rent at which the dwelling is to be let. This duty applies to every dwelling provided or improved by the grant which " is, or on a letting thereof would become, a dwelling-house to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies" (s. 22 of the Housing Act, 1949, and s. 37 (1) of the Housing Repairs and Rents Act, 1954). When a maximum rent for a house is so fixed, the " repairs increase " is excluded (s. 23 (3) (*b*) of the Housing Repairs and Rents Act, 1954). But there

is no duty on a local authority to fix the maximum rent where before the approval of the application for an improvement grant a rent tribunal under s. 1 of the Landlord and Tenant (Rent Control) Act, 1949, has already determined what is a reasonable rent for the house (s. 37 (4) of the Housing Repairs and Rents Act, 1954).

As to whether the right of the landlord to increase the rent by an amount representing eight *per cent.* on his own expenditure is affected in any way by the duty of the local authority to fix the maximum rent, the position is as follows. In the normal way, where a house is controlled and the local authority make a grant in respect of improvements, the owner is entitled to increase the rent by an amount which represents a return of eight *per cent.* on his own expenditure. (That is, in a case where the rent is already fixed under the Rent Restrictions Acts.) But if there is no rent fixed under the Rent Restrictions Acts the local authority have a right to say what will be the maximum rent. The landlord will not get the eight *per cent.* increase where the local authority fix the rent. The new rent becomes the standard rent as from the completion of the improvement works. This appears to be the distinction between the two cases. Therefore a landlord who merely improves an existing dwelling controlled by the Rent Acts, without altering the identity of that dwelling, is entitled to increase the (existing) rent by an amount equal to eight *per cent.* on the expenditure which he has himself incurred. Thus, if the total cost of the work is, say, £700, and he gets a grant from the local authority of £350, then he carries the other £350 himself and he can increase the rent by eight *per cent.* on £350, which is £28 *per annum.* But suppose that the landlord spends £700 (in respect of which he obtains a grant of £350) in creating—to use a terrible expression—a new "accommodation unit," which has never before been separately assessed or let, then the local authority have a right to say what will be the maximum rent. The new rent becomes the standard rent as from the completion of the works. The position, therefore, appears to be that where a new dwelling is created by "conversion" the local authority fix the maximum rent and the owner is not entitled to an increase of eight *per cent.* on the amount of money which he has himself spent on the premises.

Conditions to be observed where improvement grant is made—Where an "improvement" has been made, the following conditions must be observed for a period of 20 years (or a specified less period where the dwelling is not likely to provide satisfactory housing accommodation for more than 20 years) beginning with the day on which it first becomes fit for occupation after the completion of the improvement works:

(*a*) the dwelling must not be used otherwise than as a private dwelling-house except with the written consent of the local authority;

(*b*) when the dwelling is not occupied by the applicant for the improvement grant or a member of his family or a person who on the death of the applicant with or without having disposed of that interest by will has become beneficially entitled to, or to an interest in, that interest or the proceeds of the sale thereof, the dwelling must be let or kept available for letting at a rent not exceeding the maximum rent that may be paid by the occupier.

This condition does not apply to a dwelling which is for the time being occupied by a member of the agricultural population in pursuance of a contract of service (s. 2 (2) of the Housing Act, 1952).

The condition as to rent is deemed to be observed so long as the dwelling is let on a controlled tenancy or kept available for being so let (s. 37 (5) of the Housing Repairs and Rents Act, 1954).

(*c*) the rent payable by the occupier must not exceed (i) where the maximum rent has been fixed by the local authority under s. 22 of the Housing Act, 1949, the amount of that rent, (ii) in any other case the rent at which the dwelling was let before the improvement works were begun, *plus* six *per cent.* (now eight *per cent.*, in the case of works completed after November 11, 1953) of the expense of the works borne by the applicant himself. No fine, premium, or other like sum can be taken in addition to the rent.

(*d*) all reasonable steps must be taken to secure the maintenance of the dwelling so as to be fit for human habitation.

(*e*) If required by the local authority the owner must certify that the above-mentioned conditions are being observed, and any tenant, if required in writing by the owner, must furnish the owner with such information to enable the owner to certify as aforesaid.

(*f*) If the tenant assigns or otherwise parts with possession of the dwelling, no payment other than rent may be made or received.

The above conditions, which must be observed where an improvement grant is made, are to be found in s. 23 (1) of the Housing Act, 1949, as amended by s. 54 (4) of and sch. 5 to the Housing Repairs and Rents Act, 1954.

The above-mentioned conditions must be registered in the register of local land charges (s. 23 (5) of the Housing Act, 1949; and Housing Act, 1949 (Registration of Conditions) Rules, 1951, S.I. 1951, No. 185).

Breaches of conditions—In the event of the breach of any of the above-mentioned conditions, "the appropriate proportion" of any sums paid by the local authority by way of improvement grant, together with compound interest on that proportion as from the date of payment of the grant, will, on demand by the local authority become payable to them by the owner for the time being of the dwelling. "The appropriate proportion" in relation to a sum or part of a sum, means a part thereof proportionate to the extent to which the period during which conditions are required to be observed with respect to the dwelling-house remains unexpired at the date of the occurrence of the breach of conditions. For example, if an owner executes works of improvement costing £700, in respect of which he obtains a grant of £350, and is under a duty to observe the above-mentioned conditions for a period of 20 years, but breaks the conditions five years after the grant was made, then the unexpired period during which the conditions remain to be observed is 15 years, and hence the owner is liable to repay the local authority the sum of $\frac{£350 \times 15}{20}$ = £262 10s., with compound interest.

However, if the local authority consider that the breach is capable of being remedied, they may with the consent of the Minister direct that the repayment of the appropriate proportion of the grant be suspended, to enable the breach to be remedied within a stated period, and if the breach is so remedied then no amount need be repaid to the local authority. And if the local authority consider that the breach, although not capable of being remedied, was not due to the act, default, or connivance of the owner of the dwelling, the local authority may direct that no repayment of the grant be required.

The above provisions as to breach of conditions are to be found in s. 23 (2) of the Housing Act, 1949.

NOTICES

The next court of quarter sessions for the county of Cheshire will be held on Tuesday, March 22, 1955, at the Sessions House, Knutsford, Cheshire.

The next court of quarter sessions for the borough of Southend-on-sea, Essex, will be held on Monday, March 14, 1955.

MISCELLANEOUS INFORMATION

ADOPTION OF CHILDREN

The Department of Social Affairs of the United Nations initiated a study of the main lines on which adoption arrangements are regulated in different countries. Four American States, three Canadian provinces, five countries in Latin America and nine in Europe were selected for the study. As might be expected, it was found that adoption practices are influenced by the prevailing legal structure in each area. In countries whose legal system derives largely from Roman law or the Code Napoleon, for example, the links of the adopted child with his own parents are less easily severed than in countries which derive their legal system from the English common law. It was found that a number of legal anomalies continue to exist in most of the countries concerned. For instance, with few exceptions, adoption does not affect the child's citizenship, and it thus happens when inter-country adoption takes place, as in North America, that a child is handicapped through not having the same nationality as adoptive parents. It is agreed in most countries that to achieve the aim of creating a sound parent-child relationship it is desirable that the age difference between the adopting parents and the adopted child should be similar to that in normal families. There is thus a trend away from the law and custom of some countries where the practice has been to restrict adoption to persons beyond child-bearing age. While it was found that adoption by a single person is usually not prohibited, increasing emphasis is being placed upon adoption by married couples. Although it is generally accepted that adoption at an early age makes it easier for the child to become fully integrated into the adopting family there was evidence that the adoption of older children can be successful, provided that each case is carefully studied on its merits, that the child is ready to accept substitute parents and that the adoption is by people who have a deep understanding of his needs. Similarly, it was found that adoption may be very suitable for handicapped children if this is carefully arranged. With regard to adoption procedure it is agreed that adoptions should normally be arranged through authorized agencies which may be public or private and that these agencies should be adequately staffed.

SWEDISH NATIONAL HEALTH SCHEME

A new national health scheme has come into operation in Sweden which provides for compulsory national insurance but, unlike the British scheme, does not provide a completely free medical service. The supply of dentures, spectacles and artificial limbs will not come under the scheme, and no provision is made for them to be supplied at the cost of the State. The insured person must pay for his medical attention and will be able to claim 75 *per cent.* of the expense from the State. Hospital treatment and care are free but only for a period of up to two years. Similarly, medicines are not normally free, but the State will contribute 50 *per cent.* of the cost of certain prescribed medicines; but towards the cost of certain cheaper medicines there will be no contribution. Drugs required for some serious diseases, such as diabetes, will be free. Sweden was in some respects a pioneer in the social welfare services, but this new legislation passed by a Labour government is nothing like so comprehensive or costly as the British scheme. Benefits for incapacity on account of sickness will be reduced after three months. Both the rate of contribution and rate of benefit depend on the income of the insured person thus following the United States scheme. In one respect provision is made for the payment of benefit which does not come within the British scheme. If a wife who is dependent on her husband, is prevented by illness from carrying out her household duties, she is entitled to an allowance and if she is in regular employment she is in the same position as a single woman.

PROMOTION IN THE PUBLIC SERVICE

In Australia, there is a special procedure both in Commonwealth and State appointments, for the settlement of promotion in the public service. Any employee in a department who feels aggrieved has the right of appeal to a special board constituted for Commonwealth employees by the Commonwealth Government and for State employees by the government of the State concerned. A deputy to a chief officer, for instance, may feel aggrieved if on a vacancy arising in the appointment of his chief some other person is appointed perhaps from another department. He appeals, and pending the settlement of the appeal, which may take quite a long time, he may himself be holding the higher appointment in an acting capacity. Then if his appeal fails, the other person will be put over him, and he will revert to deputy unless he is transferred elsewhere, and then if he is appointed over the head of someone else that person may appeal against the appointment.

We have been interested, therefore, to see an account in the current issue of the journal of the Australian Regional Groups of the Royal Institute of Public Administration of an address on this subject by Mr. Justice George Weir, chairman of the Crown Employees Appeal Board of New South Wales. In that State (and the situation is very similar in other States) the Public Service Act provides for the filling of vacancies in any office or class of work " regard being had to the relative seniority and fitness " of officers in the department. " Fitness" is described as meaning " special qualifications and aptitude " for the discharge of the office to be filled. In all cases, seniority must be subordinated to considerations of " special fitness." The services of a number of other statutory bodies not coming within the Act have in some cases adopted the same principles. Some other employing authorities, including certain local authorities, have their own special rules governing seniority, whilst the police force operates under special legislation and rules providing for promotion in rank rather than to position.

The approach, then, of an employing authority to the filling of a vacancy is to endeavour to select a person who has qualifications and aptitude designed for or appropriate to the particular position. Normally, the authority is also required by law to pay due regard to the seniority of all candidates. In considering an appeal the tribunal must of necessity rely to a large extent upon " opinion evidence." The absence of a reasonably infallible method for the identification of the most efficient and competent officer and the search for an objective test for efficiency to govern promotion often leads to a practice of promoting the senior of those officers who are competent to carry out the duties of the position.

Employees' organizations generally emphasize the factor of seniority. In the view of Mr. Justice Weir, seniority must be a very important factor in a career service. He points out that an officer in the public service is forbidden to engage in any other employment and his services are solely at the disposal of the Crown. It is not unreasonable, therefore, that he should seek some assurance of security and progression in his career. Having in mind that his proficiency is decided from time to time by examination, and that his fitness for classified positions is subject to competitive test when promotions are involved, it is not thought to be unreasonable that his rights in this regard should be subject to careful scrutiny before they are subordinated to other considerations. Length of service is a factor in some Australian services, *e.g.*, the Victorian Public Service. This does not, however, apply in New South Wales, where seniority is governed not so much by length of service as by the salary and grade attained by the particular officer. These are not automatic but are subject to efficiency tests, annual certificates as to conduct and attention to duty, and passing of grade barrier examinations on promotion into classified positions upon the basis of his proved efficiency.

The Appeal Board have held that merely because an officer is senior to another, he should not have his seniority preserved when his junior is appointed to a position for which the junior is fitted and the senior is not. It has also held that where an employer has officers who are ready and capable of carrying out the duties of the position immediately, the employer should not be bound to accept an applicant who is not presently able to perform the duties of the position, merely because he is senior, and to promote him to it, on the chance that after an unspecified period he may or may not be able to fill the position efficiently.

The decision of the Appeal Board on any individual case is final. The board is constituted of a chairman, who is a judge of the Supreme Court, a representative of the employing authority, and an officers' representative nominated by the prescribed union of employees. Each member has one vote and decisions are either unanimous or by a majority. The hearings are generally in open court and the parties are usually permitted to be represented by counsel or solicitor or by a union official. The statute requires that decisions shall be upon " the real merits and justice of the case." The board has held that this embraces justice to the appellant, to the employer, and to other employees. Not surprisingly this frequently gives rise to many great difficulties. The chairman is satisfied that although there are undoubtedly defects the system has achieved quite a measure of justice.

WAR DAMAGE PAYMENTS

THE COMMISSIONERS' WORK IN 1954

The War Damage Commission paid out £32 million during 1954 compared with £38 million in 1953 and £57 million in 1952. The average weekly rate of payments in the last quarter of 1954 was £576,000.

The Commission paid £38,000 " cost of works " claims for repairs during the year, and made 10,000 payments on account or as instalments. The amount involved was £27 million of which about £9 million was for the repair and rebuilding of houses.

Other principal items were: commercial buildings, £5¼ million; factories, £4¼ million; churches, £3 million; shops, £2¼ million. The average individual payment during 1954 was £700 compared with £500 in 1953 and £410 in 1952. Value payments amounted to £5 million, of which £1 million related to houses. Greater London's share of the total was £19 million. Total war damage payments by the Commission now amount to £1,147 million in 4,650,000 separate payments. Contributions by property owners during and after the war amounted to nearly £200 million.

NORTHUMBERLAND ACCOUNTS, 1953/54

The Northumberland county council administers the local government services for which it is responsible over 1¼ million acres of border country. Parts of Hadrian's Wall and the peel towers can still be seen there: the fells cover the dust of Romans, Picts and border reivers.

The county comprises 16 urban districts and 10 rural districts: some of the problems of local government in the latter can readily be pictured when it is realized that they cover an area of close on 1,200,000 acres and that the average density of population per acre is only 0·08. 100,000 persons out of the total county population of 441,000 live in the rural districts.

The county has to maintain directly 2,423 miles of roads of which 941 are unclassified and 925 Class III. Highways and bridges expenditure during the year amounted to £784,000.

Total rate precepted was 15*s.* 3*d.*, an increase of 6*d.* over the figure for 1952/53. The result of the year's working was an increase of balances by £200,000 to a total of £901,000, of which £730,000 was held in cash. The 1954/55 budget allowed for a rate equivalent of 10½*d.* to be taken from balances before arriving at the precept figure of 16*s.*

We have referred previously to the common practice of underestimating of penny rate products and we observe that £113,000 was credited to the Northumberland general county revenue account in respect of penny rate product adjustments in respect of 1952/53.

Total county expenditure for the year was £6¼ m., of which education accounted for £3¼ m. After crediting government grants (including exchequer equalization grant of nearly £1 m.) and other income the net rate charge was £1¼ m., equal to £3 19*s.* 6*d.* per head of population.

The county council administer 5,720 acres of smallholdings in respect of which there was a deficit for the year of £6,700 charged to rates.

Net loan debt at March 31, 1954, totalled £3,092,000, and was owing to the following classes of lenders:

	£	*Percentage*
Public Works Loan Commissioners	2,684,000	87·8
Northumberland Superannuation Fund	260,000	6·3
Other Mortgagees	148,000	5·9
	3,092,000	100·0

NOTTINGHAMSHIRE PROBATION REPORT

The downward trend in the statistics of crime is noted in the annual report of Mr. P. W. Paskell, principal probation officer for the Nottinghamshire combined area, who adds that this is true of juveniles as well as adults. As he observes juvenile delinquency became headline news, and conferences and local efforts to deal with the situation resulted. What effect all this has had cannot be measured, but it cannot all have been wasted. Mr. Paskell adds:

"Throughout all this considered effort, and alas a lot of ill considered effort as well, the courts went quietly on doing this difficult job—not seeking recourse to hysterical measures but pursuing where possible a policy of constructive and reformative treatment. It is gratifying indeed that their good faith shows promise of reward."

The number of cases on probation has increased, in spite of some reduction in the number of crimes. A notable feature is that about half the adult males are under supervision under orders made at courts of assize and quarter session. Nevertheless, says the report, figures show that in the use of probation among adults the county as a whole still falls behind the national average.

Dealing with statistics of successes in probation, Mr. Paskell says, and we have no doubt he is right, that not every probationer who finishes his probationary period satisfactorily can be said to have benefited as a result of probation, and that, on the other hand, many a probationer who cannot be claimed as a success has actually benefited by supervision. This report shows a satisfactory proportion of probationers keeping out of trouble over a period of years following the end of the probation order.

On the subject of after-care, Mr. Paskell emphasizes the importance of this work, and adds that there are many people who feel far from happy with the administrative arrangements or legal provisions controlling it. Evidently he considers that some of those who can be assisted and in effect supervised only if they consent should be compelled to be under supervision as a measure of after-care, and he quotes a case of a young man who, on release from prison after earning full remission of sentence refused further contact with the probation officer after a few weeks. He was, in the opinion of Mr. Paskell, a man who needed assistance and who might become a public danger. A practical suggestion in this report deals with accommodation and equipment. It is urged that interviewing rooms, especially those used in connexion with matrimonial reconciliations, should not be too drab, and should be above rather than below, office standards.

NEWARK WEIGHTS AND MEASURES DEPARTMENT

"The importance of the weights and measures service to the community may be judged from the fact that at the present time 30 *per cent.* of all consumers' expenditure goes on food." So states Mr. G. Roberts, inspector for the borough of Newark in his report for the year ended September 30, 1954. He points out also that whereas formerly the housewife could see the grocer weighing her purchases, she now receives most of them as pre-packed articles and is therefore less able to protect herself against receiving short weight and in consequence has to rely more upon the vigilance of the weights and measures service to ensure she receives the quantity for which she pays.

Of course food is not the only kind of goods that concerns the inspector. Visits are paid at least once a year to shops, factories, warehouses, markets, garages, railway stations, licensed premises, farms, coal yards, itinerant vendors' vehicles, sand and gravel pits, egg-grading stations, etc. The visits naturally include some surprise visits. The percentage of appliances found incorrect during the year under review was as follows: weights 16¼ *per cent.*, weighing instruments 9 *per cent.*; petrol pumps 5 *per cent.* For the most part, the errors were small and resulted from normal wear and tear, and in only one instance was it considered necessary to resort to the institution of legal proceedings.

Mr. Roberts, like some other inspectors, deprecates the use of unfamiliar words to describe the contents of pre-packed articles. "Thus such foods as herbs, condiments, crisps, etc., which are normally sold in small quantities, often have their weights marked in drams, *e.g.*, '12 *dr.*' Few people realize that there are 16 drams to the ounce. How much more straightforward it would be if the above statement had been '½ *oz.*'—a quantity readily understood. Similarly with liquids marked '10 *fl. oz.*'—again a meaningless statement to many people, whereas its equivalent, *i.e.*, 'half-pint,' is well known."

At p. 59, *ante*, we referred to correspondence between the Home Office and East Ham council about restrictions on the sale of fireworks. Mr. Roberts refers to the ignorance of some shopkeepers who sell fireworks. He writes, under the heading "Explosives Acts" as follows: "Little difficulty is experienced with cartridges as the persons who deal with them do so all the year round and are aware of their responsibilities. The position with regard to fireworks is rather different as shopkeepers only sell them for a few days in the year and do not always treat them with the respect which they deserve. Special attention is therefore given to this aspect of the department's duties during the 'fireworks season.' To advise traders on the best methods of storage and to assist them to comply with their obligations, they are given annually a leaflet setting out the legal storage requirements. In short, every effort is made to ensure that these dangerous goods are stored under reasonably safe conditions. The efforts which have been made in this direction in the past have resulted in a considerable improvement in the general position this year, as in only eight of the 63 registered premises were fireworks being stored incorrectly, compared with twice that number in each of the two previous years."

APPROVED HOMES AND HOSTELS

In circular No. 25, dated February 7, it is stated that the Secretary of State has continued the flat rates of £1 16*s.* 9*d.* for hostels and £3 1*s.* 3*d.* for homes per week in respect of persons under the supervision of a probation officer and required by a probation or a supervision order to reside in an approved probation hostel or an approved probation home.

NOTICES

A special university lecture in laws on Islamic Law: Its Nature in the Light of History, will be given by Professor J. Schacht, M.A., Professor of Arabic in the University of Leiden, at the School of Oriental and African Studies, University of London, W.C.1., at 5 *p.m.* on Monday, March 7, 1955. The chair will be taken by Professor J. N. D. Anderson, O.B.E., LL.B., M.A., Professor of Oriental Laws in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION
(Before Finnemore, J.)

SLADE *v.* BATTERSEA AND PUTNEY GROUP HOSPITAL MANAGEMENT COMMITTEE

February 2, 3, 1955

Hospital—Injury to wife of patient—Permission by hospital authority for wife to visit husband—Invitee or licensee—Liability of hospital authority.

ACTION for damages for negligence.

The plaintiff, whose husband had been ill for some time in a hospital managed and controlled by the defendants, was notified by them that he was on the danger list and was given permission to visit him at any time. As she was leaving the hospital after a visit to her husband, she slipped and fell on a part of the floor of the ward where polish had recently been spread, but had not been rubbed off. It was a rule of the hospital that people should be warned when polishing was in progress, but no warning was given to the plaintiff on the occasion in question, nor did she know that there was polish on the floor.

Held, (i) since the plaintiff was visiting a patient at the hospital with the permission of the defendants, she was there on a matter of mutual interest to herself and the defendants, and, therefore, she was an invitee; and, that part of the floor of the ward on which was the polish not being safe, the defendants were liable for breach of their duty to her.

(ii) even if she were a licensee and not an invitee, the defendants were in breach of duty to her, since the part of the floor concerned was a concealed danger against which she was entitled to be protected and of which she was not warned.

(iii) whether she was an invitee or a licensee, the defendants did not act with reasonable care which required a warning to be given to her of the polish on the floor, and, therefore, they were liable for negligence.

Counsel: *F. C. Denny* for the plaintiff; *E. Daly Lewis* for the defendants.

Solicitors: *R. I. Lewis & Co.* for the plaintiff; *Sharpe, Pritchard & Co.*, agents for *J. S. Tapsfield*, for the defendants.

(Reported by G. A. Kidner, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 15.

LICENCE FOR A SLAUGHTER-HOUSE

Wells city justices had to construe last month the provisions of the Slaughter-houses Act, 1954, sch. 1, which was enacted on July 5 last.

The matter arose in consequence of a refusal by the local council to licence a building as a slaughter-house and the unsuccessful applicant appealed to the justices.

The objections of the council were principally on account of the fact that within 100 *ft.* of the slaughter-house there were 14 occupied houses, the occupants of which would hear the noises common to slaughter-houses, and would be troubled with rats, flies and unpleasant smells. It was considered by the council that although the slaughter-house, which had not been used as such for a number of years, was not in first class condition, it could be made structurally suitable, when the repairs the appellant had agreed to carry out, were completed.

The matter turned on the construction of para. 2 (1) (*a*) and (*b*) of the first schedule to the Act, wherein it is provided that the local authority shall not refuse an application for the grant or renewal of a slaughter-house licence, in respect of slaughter-houses licensed or registered before October 1, 1939, unless they are satisfied that " the premises . . . are not suitable for use as a slaughter-house and it is not reasonably practicable to render them suitable for such use." The court took time to consider the position and at the adjourned hearing the chairman gave a considered judgment. He pointed out that counsel for the respondent council had maintained that the construction put upon the word " suitable " by the appellant in effect limited the inquiry as if the word " structurally " had been inserted in the schedule before the word " suitable," whereas in his (counsel's) contention a wider interpretation must be put upon the effect and intention of the word " suitable " so as to enable the justices to consider in addition the geographical siting of the slaughter-house and any adverse effect upon the amenities of the immediate neighbourhood.

The chairman, after recalling that counsel for the appellant had called in support *Pilling* v. *Abergele U.D.C.* [1950] 1 All E.R. 76, stated that the bench was of the opinion that the Act dealt with the securing of adequate slaughter-house facilities locally, and that the question of amenities, and any possible nuisance which might arise, were matters to be left to or governed by town and country planning or public health legislation. The chairman stated that the bench found that it was reasonably practicable to render the premises suitable and they accordingly allowed the appeal; he added that if the bench's interpretation of the meaning of the word " suitable " as used in the schedule to the Act was wrong, and if the court was able to have regard to the question of amenities, it would have upheld the decision of the council and dismissed the appeal.

COMMENT

The writer has thought fit to report this judgment at some little length because it follows closely upon a decision of the appeals committee of the Warwickshire quarter sessions in *W. Richards (Aston), Ltd.* v. *Sutton Coldfield Borough Council*, *see* p. 49, *ante*, and it would appear clear beyond doubt that in both cases the relevant statutory provision was correctly interpreted, although it is perhaps permissible to doubt whether Parliament intended this interpretation.

(The writer is greatly indebted to Mr. F. N. Wyatt, clerk to the Wells city and county justices, for information in regard to this case.) R.L.H.

No. 16.

UNWILLING TO VOTE

A 62 year old labourer appealed to His Honour Judge Batt sitting at Rawtenstall county court last month against a decision by the town clerk of Rawtenstall, Mr. J. W. Blomeley, LL.B., in his capacity as electoral registration officer, to place the appellant's name on the register of electors.

The appellant, who said that he was under the care of a doctor, informed the Judge that he wanted his name erased from the register because he did not wish to continue to vote. The learned Judge pointed out that the mere fact that his name was on the register did not mean that he had to vote, but the appellant repeated his request that he wanted his name erased.

The town clerk, to whom the writer is greatly indebted for this report, reminded the court that under s. 7 of the Representation of the People Act, 1949, it was his duty as registration officer to prepare and publish in the spring and autumn of each year (*a*) a register of parliamentary electors and (*b*) a register of local government electors, and that by subs. (2) the registers were, so far as practicable, to be combined, the names of persons registered only as local government electors being marked to indicate that fact.

The town clerk explained that having fulfilled the duty cast on him by s. 9 of the Act, to have a house to house inquiry made as to the persons entitled to be registered, he had caused to be prepared and published electors' lists on which appeared the name of the appellant in respect of premises in a street in Rawtenstall. The town clerk pointed out that s. 7 of the Act gave no discretion to the registration officer to exclude any person entitled to be registered, and further that if any persons thought that the use of the words " entitled to be registered " meant that a person had an option as to whether or not his name was included in the register, such belief was wholly fallacious for the Representation of the People Regulations, 1949, provided that a person who failed to give information required by a registration officer for the purpose of his duties, was liable on summary conviction to a fine of £20.

The town clerk stated that when the appellant submitted to him the appropriate form objecting to the inclusion of his name on the register, although he was of the opinion that he had submitted no valid grounds for objection, he sent him the appropriate form of notice as to claim or objection, and ruled that he was not entitled to object. The town clerk submitted that his ruling was correct because s. 9 (1) (*c*) of the Act provided that the registration officer was to determine all claims for registration made by any person and all objections to any person's

registration duly made by *another* person appearing from the electors' list to be himself entitled to be registered.

The town clerk asked that the appeal should be dismissed on the ground that the appellant had put forward no valid grounds of appeal and also on the ground that he was not entitled to object to the inclusion of his own name on the register.

The learned Judge, in dismissing the appeal, told the appellant that he would have to pay the costs and added " If you indulge in these stupid foibles you have to pay. You cannot come to court and waste time."

COMMENT

It would appear that the town clerk's submission was well founded. It will be recalled that by s. 45 of the Act it is provided that an appeal shall lie to the county court from any decision of the registration officer on any claim for registration or objection to a person's registration made to and considered by him. A proviso to the section prohibits the right of appeal where the would-be appellant has not given the prescribed notice of appeal within the prescribed time. Subsection (2) of the section provides that no appeal shall lie from the decision of the Court of Appeal on appeal from a decision of the county court Judge under this section. R.L.H.

PENALTIES

Ammanford—January, 1955. Driving a motor vehicle while in a position not to have proper control. Fined £5. Defendant, the driver of a truck, had three passengers in the cab; the vehicle crashed.

Cardigan—January, 1955. Moving four pigs without a movement licence. Fined £2.

Prestatyn—January, 1955. Using land for camping purposes in contravention of an enforcement order. Fined £20, to pay £3 3*s*. costs. Defendant, who pleaded guilty, acquired the land and bought a number of trailer caravans and commenced using the land as a camping site.

Lewes—January, 1955. Offering himself as a servant with a forged certificate of character. Fined £10. Defendant, a man with eight previous convictions, secured an engagement with a peer as a working farm foreman by giving himself a good character in a letter which he signed in another name. Defendant also spoke to the peer on the telephone about his capabilities, the peer being under the impression he was talking to defendant's employer.

Oxford—January, 1955. Being the owner of dogs found attacking livestock. Two defendants, each fined £2.

Middlesbrough—January, 1955. Using offensive language. Fined £5. Defendant, a skin specialist, who paid 1½*d*. instead of 2*d*. for a ticket, called the conductress who drew his attention to it, an insolent, insufferable young hussy.

Northallerton—January, 1955. Neglecting a dog so as to cause it suffering. Fined £5, to pay £10 10*s*. costs. Disqualified from keeping a dog for life. The dog, a sealyham bitch, was found in a deplorable condition.

Newton Abbot—January, 1955. Selling butter not of the quality demanded. Fined 10*s*., to pay £2 2*s*. costs. Defendant, a café proprietor, mixed margarine with the butter. It was pointed out to him that where the customer asked for butter, butter should be given, not a mixture.

Mark Cross—January, 1955. Selling watered milk. Fined £12, to pay £8 18*s*. costs. Samples taken at defendant's farm contained added water ranging from 9·4 *per cent*. to 20 *per cent*. Defendant bore a high reputation as a farmer.

Bradford-on-Avon—January, 1955. Causing unnecessary suffering to a cat and two rabbits. Two defendants. Husband to serve two months' imprisonment and to pay £5 costs; wife fined £5. Part of a dead rabbit was eaten by its mate " in the throes of hunger."

PERSONALIA

APPOINTMENTS

Mr. James Godby Shorrock has been appointed by the Queen legally qualified deputy chairman of the Westmorland county quarter sessions, until January 22, 1958, on the recommendation of the Lord Chancellor. Mr. Shorrock is a barrister on the Northern circuit.

Mr. Norman Harper has been appointed by the Queen to be recorder of the borough of Doncaster, Yorks., on the recommendation of the Lord Chancellor. The appointment was effective from February 8. Mr. Harper was called to the bar in 1927, and is a barrister on the North-Eastern circuit. He was recorder of Richmond, Yorks., from 1944 to 1951.

Mr. Herbert James Baxter, O.B.E., has been appointed by the Lord Chancellor to be county court Judge of circuit 34 (Brentford and Uxbridge, Middlesex) with effect from Sunday, February 6, following the retirement of Judge Tudor Rees. Judge Rees will continue to practise his other legal work—he is deputy lieutenant of Surrey, chairman of Epsom magistrates, and chairman of Surrey quarter sessions. His retirement was kept secret until very recently, so that there would be no farewell ceremonies.

Mr. George Chester Ogden, M.A. (Oxon.), the present deputy town clerk of Leicester, has been appointed to succeed Mr. Kenneth Goodacre, T.D., as town clerk, when the latter takes up his appointment as clerk to the Middlesex county council on March 1 next. Mr. Ogden, who is 41 years old, was admitted in 1940, after serving articles in the office of the town clerk of Middlesbrough, where he was subsequently appointed junior assistant solicitor. After the war Mr. Ogden was promoted senior assistant solicitor, and was appointed deputy town clerk of Middlesbrough in 1946, where he served until he was appointed to his present post in November, 1953.

Mr. Reginald Douglas Woods Maxwell, at present senior solicitor in the town clerk's department, Watford, Herts., has been appointed deputy town clerk of Aylesbury, Bucks. Mr. Maxwell is 34 years of age, and was admitted in June, 1950.

Mr. D. R. James of Morriston, has been appointed coroner for the West Wales area, embracing Gower and Pontardawe rural districts and Llwchwr urban district. His appointment came exactly 27 years after he became a solicitor. Mr. James has been in practice at Pontardawe for many years.

Mr. B. A. Sanders, first assistant to the clerk to the justices for Bradford city, has been appointed chief assistant to the clerk to Durham and Chester-le-Street petty sessional division justices. Mr. Sanders was employed as junior clerk in the office of the clerk to Halifax, Yorks., borough justices from 1936 to 1939. He returned to Halifax on May 1, 1946, as first assistant and remained in that position until November 1, 1952, when he was appointed to the position he held at Bradford.

Mr. Joseph Haslam has been appointed law clerk with the corporation of Birkenhead, Cheshire. Mr. Haslam was formerly a legal assistant with Stafford borough council, and previous to that was in the same capacity with Chesterfield, Derbyshire, borough council. He takes up his new duties on February 21.

Mr. John Yair has been appointed as a whole-time probation officer for Worcestershire county. He will be assigned to the Oldbury division and will take up his duties there on March 1, 1955. Mr. Yair is 43 and has been a probation officer for the city of Birmingham since May 1, 1951. The former occupant of the post was Mr. A. C. L. Haswell, who resigned to become a probation officer for the county borough of Merthyr Tydfil as from February 1, 1955. Mr. Haswell is 27 years old and has been a probation officer for Worcestershire since April 20, 1953.

Miss Ruth Elizabeth Alice Lawrence, a probation officer for the city of Portsmouth, has been appointed a probation officer for the city of Plymouth taking the place of Miss H. M. Ball, B.A., who has resigned. Miss Lawrence will commence her new duties on March 1, 1955.

RETIREMENTS

Mr. J. B. Fogaty is retiring from the clerkship to the justices of the petty sessional division of Christchurch, Hants., which he has held since being admitted in 1931. He will continue in private practice.

Mr. O. Gwyn Owen is retiring after 47 years' service as assistant clerk to the Pwllheli, Caern., magistrates; he is being succeeded by Mr. Enid Lewis Jones.

Mr. A. E. Haddrell, clerk to Alveston, Gloucs., parish council for nearly 27 years, is to retire at the end of March.

OBITUARY

Sir Robert Lyall-Grant, a former Chief Justice of Jamaica, has died at the age of 79. Sir Robert attended Edinburgh University, where he graduated LL.B. in 1903, being admitted to the Faculty of Advocates the same year. He was appointed Attorney-General of Nyasaland in 1909 and was elevated to the Bench of the High Court of that protectorate in 1914. In 1920 he was transferred to Kenya, where he served as Attorney-General until he was appointed a Puisne Judge in Ceylon in 1926. He remained there for some six years and was then appointed Chief Justice of Jamaica. He retired in 1936.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

JUSTICE OF THE PEACE ACT, 1361

Mr. E. H. C. Leather (Somerset N.) has been given leave under the Ten Minute Rule in the Commons to introduce a Bill to amend the Justice of the Peace Act, 1361.

Asking permission to introduce the Bill, Mr. Leather said that its one and only clause simply said that nothing in the 1361 Act should prevent a person who was bound over for a breach of the peace from appealing to quarter sessions.

It had arisen because there had been half a dozen cases in recent years, one of which actually took place in his constituency. In that case, his constituent was alleged to have been sending out anonymous letters, and was brought before the bench and bound over. In the eyes of the law, binding a person over was not equivalent to a conviction. Therefore, the law as it stood said, " As there is no conviction there is nothing to appeal against, so you cannot appeal."

He went on to say that unhappily, in times when these things made great headlines in the newspapers, an impression was made on the public mind that a person had been declared guilty, and there had been cases in which persons strenuously denied guilt but felt that a stain had been put on their characters and on their honour which would last the rest of their days. Yet the law denied them any possibility of appealing for a second hearing.

In the particular case he had in mind, several of the magistrates themselves told him they were most unhappy, and it did seem to him that in this democratic age the least one could do was to make a very minor adjustment of the law which, he was advised by magistrates and lawyers, would not have any repercussions anywhere else but which would give a person who found himself in that most unfortunate position a right of appeal to quarter sessions for a second hearing. He hoped the House would give the Bill a quiet, peaceful and silent passage to the Statute Book.

Leave was granted without dissent, and Mr. Leather introduced his Bill with all party support. It will come up for Second Reading on March 11.

OCCASIONAL LICENCES AND YOUNG PERSONS

Mr. G. Thomas (Cardiff W.) asked the Secretary of State for the Home Department whether he was aware of the anomaly in the law which allowed young persons under 18 years of age to purchase alcoholic drinks in dance halls granted an occasional licence; and what action he proposed to take.

The Secretary of State for the Home Department, Major Lloyd George, replied that he was aware that the restrictions on the supply of intoxicating liquor to young persons for consumption on the premises had never been applied to supply under an occasional licence. As at present advised, he did not think that there was any immediate need for legislation to amend the law in that respect. An occasional licence might only be granted with the consent of the justices, and that should give the justices an effective measure of control.

ASSISTANCE FOR ACCUSED PERSONS

Mr. V. Collins (Shoreditch and Finsbury) asked the Secretary of State if he was aware that many innocent persons charged with criminal offences were put to considerable expense in proving their innocence; and if he would consider ways, either by extension of the Legal Aid Act, 1949, or other means, whereby they could be assisted.

Major Lloyd George replied that the courts in England and Wales already had power, when satisfied that such a course was desirable in the interests of justice, to grant legal aid to an accused person who was committed for trial. Legal aid might also be granted in certain circumstances in magistrates' courts; s. 18 (2) of the Legal Aid and Advice Act, 1949, widens the power to give legal aid in magistrates' courts, but he was not in a position to say when it would be possible to bring that subsection into effect. Under the Costs in Criminal Cases Act, 1952, the courts also had power, in the case of an indictable offence, to order the reasonable costs of the defence to be paid out of local funds when the accused had been discharged by the magistrates' court or acquitted.

ROAD TRAFFIC OFFENCES

When the Road Traffic Bill was considered in Committee in the House of Lords, Lord Merthyr moved a new clause to provide that a person found guilty of causing the death of another person by dangerous or reckless driving should be liable to imprisonment for a term not exceeding five years.

He said that s. 11 of the 1930 Act, which charged the offence of driving recklessly or dangerously, was not sufficient to deal with the worst cases. The alternative charge of manslaughter was unwieldy, inappropriate, unsuitable and too complex; juries often failed to convict guilty men on those charges. He suggested that something was required in between the two extremes of manslaughter and dangerous driving.

Lord Goddard, commending the new clause, said he had always considered it rather a reflexion on the law as it stood that driving under the influence of drink was punishable only by a sentence of six months' imprisonment, while driving dangerously was punishable by a sentence of two years. He was glad to see that the Bill increased the sentence for drunken driving, because he submitted that for people to drive motor cars under the influence of drink was almost as serious an offence as attempted murder. They were mad dogs. He said that magistrates passed ridiculously light sentences in many cases. He believed it was because they feared that if they passed severe sentences people would always elect to go for trial—and quarter sessions' juries nearly always acquitted.

Lord Lucas said that the fact that magistrates have taken a completely different view from Parliament and had inflicted fines amounting to only about one-fifth of the maximum had been the greatest single factor in the failure to bring home that due care and attention should be exercised by everyone on the roads.

After the Lord Chancellor had said that the House appeared to be in general support of the proposal and undertaken to bring in a Government clause on report, Lord Merthyr withdrew the clause.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Monday, February 14

FISHERIES BILL, read 2a.

Tuesday, February 15

REQUISITIONED HOUSES AND HOUSING (AMENDMENT) BILL, read 2a.

Wednesday, February 16

JUSTICES OF THE PEACE ACT, 1361 (AMENDMENT) BILLS, read 1a.

Friday, February 18

PUBLIC SERVICE VEHICLES (CONTRACT CARRIAGES AND SPECIAL TRAVEL FACILITIES) BILL, read 2a.

REVIEWS

The Young Lawyer. By J. L. Clay, J. B. Frankenburg and J. A. Baker. London: Butterworth & Co. (Publishers) Ltd. Price 12s. 6d. net.

The three learned authors of this work, two of whom are members of the bar and the other a solicitor, say that it is not intended as a law book. It quotes no cases and few statutes. Its purpose is to help those who think of entering the legal profession, and those who have done so and are still at the start of their careers. They point out that the profession involves dealing with a variety of people and with many problems, some of which are interesting and all of which seem important to the client. The differences between types of practice are explained in simple terms, and the student is introduced to the nature of conveyancing, company work, and litigation. He is duly advised to give his attention to the work of the costs clerk if he is in a solicitor's office, and to the importance of choosing the right chambers if he is going to practise at the bar. The importance to a barrister of chambers which employ a good clerk is duly stressed. The different courts are introduced to the beginner's notice, with due prominence given to the magistrates' court and county court, in which he may expect to spend most of his litigious life, but the methods and nature of procedure in the High Court are also fully dealt with. There is a chapter on " Other tribunals " which includes the licensing justices. Our only adverse comment is that there are now so many tribunals established under modern statutes, and so many governmental inquiries at which judicial methods are substantially followed, that the student might also be given information about some of these; as a junior barrister or a junior partner in a solicitor's office, he may find that quite a large part of the time he spends upon his feet is so spent before inspectors and tribunals, which are not courts in the proper sense although the procedure of the courts is substantially adhered to, witnesses are examined and cross-examined, and may at some of these hearings be required to give evidence on oath. This is, however, a very minor point of criticism and, taking the book as a whole (it is only just over 160 pages), we strongly recommend it to those for whom it is intended, and to their mentors who have the duty of introducing them to practice.

ALL CHANGE FOR HADES

Those benefactors of mankind, the masters of applied science, having crowded masses of fast-moving vehicles on to roads inadequate to contain them, having infested with the crepitations of lethal aircraft the atmosphere above our heads, are now turning their attentions more seriously to subterranean regions. Only a few weeks back we had occasion to refer in these columns to certain innovations devised for the Paris *Métro;* London, not to be outdone, is planning to extend the honeycombing of its subsoil with a new east-west line. And now, hard upon these announcements, comes the news from a third European capital of the official opening of the *Metropolitana*—an underground railway system running from the Termini Station, in the centre of Rome, to Laurentina, in the neighbouring countryside. Conceived in 1938 by the late lamented Benito Mussolini, the new line is seven miles in length, and skirts such historic sites as the Circus Maximus, the Colosseum and the Arch of Constantine. The standard fare of forty lire (about 6*d.*) will carry the passenger for any distance he likes to travel.

Classical scholars will receive this announcement with mixed feelings. How the great builders of the Imperial Age would view this profanation of the sacred soil of the Eternal City may be better imagined than described; what effect the construction of the tunnels and the rumbling of electric trains is likely to have upon the stability of the famous structures beneath which they run is a question which has no doubt exercised the minds of the best engineers and architects in the land. But the associations called up by this grandiose project are far more ancient than the Empire itself; they go back, beyond the beginnings of Roman history, to the legendary days of Aeneas the Trojan, the heroic Founder of the Race.

Laurentina, the south-western terminus of the line, is built on the site of the ancient Laurentum—the Laurel City—where old King Latinus once ruled his realm of Latium. Vergil tells us, in the later books of the *Aeneid*, how a small company of Trojan fugitives sailed away, after the sacking of their city, seeking a new home in the west; how they landed, after many vicissitudes, at Laurentum, where they were hospitably received by King Latinus, who gave his daughter Lavinia to Aeneas in marriage. Their descendants, according to legend, were the forefathers of the Roman people, who have left their imprint upon the greater part of Europe, Northern Africa and Asia Minor, and bequeathed to posterity a legacy rich in the arts of government and of law; massive works of architecture and engineering, and a great and varied literature. There is a symbolic fitness in this twentieth-century linking-up of Rome with Laurentum, the legendary cradle of the race.

It is interesting to speculate on the feelings of that hero of old, if he were suddenly transplanted into the present year of grace and taken, as a distinguished guest, for a trip on the new line. Fearless and imperturbable as he was on all occasions, he might well regard the descent below ground, and the roaring electric monster that would carry him from the centre of Rome to his wife's native city, as a magic device of the infernal deities, calculated to plague the spirits of the dead and shake the courage of the living who might have the presumption to visit these subterranean realms. As every reader of the classics is aware, such an excursion would be no new experience for the intrepid Aeneas. The Sixth Book of Vergil's Epic contains a full description of that adventure, and there are some interesting parallels with the present day.

The first landing of the Trojans in Italy was near Cumae, in the vicinity of Vesuvius. Here dwelt the Sibyl, the priestess of Apollo, in a vast and gloomy cavern; to her Aeneas resorted to seek divine guidance and to learn his fate. Not far away lies the gloomy Lake Avernus, filling the crater of an extinct volcano, and surrounded by high cliffs which, in antiquity, were covered by a great forest sacred to Hecate, the goddess of Hell. From the surface of the Lake arose mephitic vapours, and altogether it is just such a place as would suggest the terror and the desolation of the Lower World. So indeed it proved; when Aeneas prays the Sibyl to guide him through the infernal regions, that he may take counsel with the shade of his dead father Anchises, it is from the murky confines of Avernus that the expedition sets forth. First comes the Sibyl's warning—it is all very well to get down below—" night and day the gates are open for all who would make the descent; but to retrace your steps and emerge again into the upper air—that is the task, and that the need." So might the Inquiry Office on the new underground line warn any belated traveller today: " the doors are open, the trains are running still; but whether you will reach your destination, and find the lifts still working when you get there, is another matter altogether."

Then, says the Sibyl, no living man can cross the threshold of Hades without his pass—a Golden Bough from the tree sacred to Proserpina, Queen of the Lower World. Ordinary travellers —the shades of the dead—pay a fixed fare of two copper coins, and for them there are no return-tickets; living persons, who take up much more room, must show the Golden Bough at the barrier, both on entry and exit; without it there may be trouble in getting back. Armed with his pass, Aeneas follows his guide, and soon reaches the portals of Hades. Underground transport, he finds, is not by rail but by water; Charon's boat must carry him across the River Acheron to his destination. Apart from this slight divergence, the ensuing description bears so close a resemblance to the scene at any underground station in the rush-hour that the reader will be convinced of Vergil's uncanny gift of prophecy:

> " As the craft comes in, the crowd rushes to the edge to meet it—men and women alike, matrons, mighty heroes, young lads and slender girls.
>
> "So in the first frost of autumn the leaves drop and fall from the trees in showers; so the birds in flocks fly in from the surface of the deep, when the cold drives them across the ocean to warmer climes. There stand the shades, praying to be taken first upon their way, and stretch forth their hands in their craving to reach the end of their journey. But the taciturn conductor admits now these, now those; others he keeps off from the verge, and turns disconsolate away."

All that is now required is for some Minister of Transport, with a literary bent, to inscribe over the entrance to the terminal station the poet's magic words—

FACILIS DESCENSUS AVERNO.

A.L.P.

BOOKS AND PUBLICATIONS RECEIVED

Cartel (a quarterly). International Co-operative Alliance, 11 Upper Grosvenor Street, London, W.1. Subscription: 10*s.* a year.

New Jersey Streamlines her Courts: A revival of " Jersey Justice." Joseph T. Karcher, LL.B. Reprint from American Bar Association Journal, September, 1954. Meador Publishing Company, Boston 15, Massachusetts.

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third edition. Fourth Cumulative Supplement. Edited by T. R. Fitzwalter Butler, and Marston Garcia, Barristers-at-Law. London: Sweet & Maxwell, Ltd., 2 and 3 Chancery Lane.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Assault—*Complainant ordered to enter into recognizance—Refusal.*

A laid a complaint that B had assaulted her. The magistrates before whom the complaint was heard dismissed the case and decided to bind over both A and B in their own recognizances of £5. B consented to be so bound over but A refused. The question now arises as to what action, if any, can be taken against A. I should value your opinion on the following points :

1. Is a binding over order mandatory or is it similar to a probation order which requires the consent of the offender before it is made ?

2. If the answer to 1 is in the affirmative, can the provisions of s. 91 (3) of the Magistrates' Courts Act, 1952, be invoked notwithstanding that no complaint has been laid against A ? SAMBER.

Answer.

1. Yes. In the case of probation there is an express statutory provision that the order cannot be made unless the offender agrees, but there is no such provision in the case of recognizances to keep the peace.

2. No ; because there is no complaint and the subsection is not applicable. Moreover s. 54 does not apply because this recognizance is not one required by statute. It rests on the ancient powers of justices, which are stated by *Barlow* (1745) to be "of congruity." There is thus no statutory limit to the period of imprisonment in default of entering into a recognizance or finding sureties, but many courts consider it prudent not to exceed two months.

2.—Landlord and Tenant—*Housing Repairs and Rents Act*, 1954—*Notice of increase.*

The owner of a large estate of semi-detached houses has served notices of increase under the above Act on all his tenants. Accompanying each notice is a printed form of declaration, as laid down by the Act and regulations. In the schedule of the declaration, however, no description of work has been set out opposite the items printed on the form, *i.e.*, external structural repairs, internal structural repairs, &c. All these items have been bracketed together and one figure given, together with the statement "This figure is calculated as an apportionment of the total value of the maintenance and materials expended on the whole estate which was built under the Housing (Financial Provisions) Act, 1933."

As houses on this estate have become vacant, the owner has repaired such houses fairly lavishly and sold with vacant possession. The owner being a builder has carried out all repairs by his own employees.

The question which arises is whether the declaration complies with the Act. Paragraph 1 of sch. 2 to the Act reads "Work of repair of a general description specified in the declaration has been carried out on the dwelling-house."

"Dwelling-house" is defined in s. 49 (1) of the Act, and relates to land comprised in a tenancy. It is submitted that the declaration is not in order because (i) it does not give a general description of work under each of the headings applicable, as set out in the schedule to the declaration (in fact it does not give any description of work), and (ii) any description of work must relate to the particular dwelling-house concerned.

The only provision for "spreading" costs appears in para. 7 (3) of sch. 2. This relates to a building containing two or more dwelling-houses and does not apply to the present case. Paragraph 7 (2) states that work which enured for the benefit of the dwelling-house and also for other premises shall, whether the work was carried out on a site comprised in the dwelling-house or elsewhere, be treated as having been carried out on the dwelling-house to a value equal to such proportion of the value of the work as ought to be apportioned to the dwelling-house. It is difficult to see how this sub-paragraph applies. Ordinary items of repair such, for example, as outside painting or wall pointing carried out on one house does not usually enure for the benefit of another house. Many internal repairs (not decorations) must have been done on an estate such as this, and these cannot be spread. In any case the sub-paragraph does not say that the work shall be divided equally but shall be treated as having been carried out to each dwelling-house to a value equal to such proportions of the value of the work as ought to be apportioned. Unless the declaration states what work has been done there is no means of determining the correctness of the apportionment.

I have advised that all the tenants should appeal to the county court and probably one case could be heard as a test case on the question of sufficiency of the declarations.

Some tenants are advocating doing nothing but to refuse to pay the increase when it becomes due, and then raise the question of the sufficiency of the declaration. I have told them that once the time for appeal (*i.e.*, 28 days) has gone they cannot question the notice on these grounds and that if the condition of the property does not warrant the issue of a certificate of disrepair then the increase would be payable.

One house-proud tenant who could not get repairs done by the landlord has done them himself. During the past four years the landlord has only re-painted the outside and the cost of this could not possibly have equalled three times the statutory repairs deduction. It seems that para. 8 in sch. 2 applies.

I should be glad of your opinion on the points raised above.

C. LAYO.

Answer.

We do not feel difficulty about para. 7 (2), which applies to such work as repairing a drain which connects a block of houses to the sewer, or repairing the roof of a block of flats. Upon the case you put to us, we agree otherwise with your conclusions.

3.—Licensing—*Special order of exemption—Whether appropriate to grant restricted to "off" sales.*

In view of the observation of Lord Goddard in *R.* v. *Brighton Justices* (1954) 118 J.P. 117, that there is no power to restrict an on-licence into an off-licence, can the justices grant a special order of exemption to the holder of a full on-licence authorizing him to sell on a special occasion for consumption off the premises, wines and spirits, etc., in bottles from the off-licensed portion of his house, subject to an undertaking that the rest of the licensed premises will be closed ?

Where special facilities exist Christmas extensions of this character have been granted for many years in this town. It would now appear to be irregular, although the power to attach conditions to the grant of an "on" licence has statutory authority. ORWINE-ON.

Answer.

It is always difficult to give such advice as will have the effect of imposing a prohibition on a long existing practice, especially where that practice has been carried on, apparently without complaint from any quarter, for many years, and the advice is based on the consideration of a case decided on the construction of a different section in an Act of Parliament and on facts which go much further than the facts of the situation concerning which advice is sought.

In *R.* v. *Brighton JJ., Ex parte Jarvis* (1954) 118 J.P. 117, the holder of an off-licence at Brighton had been granted, in his capacity of holder of an on-licence at Taunton, an occasional licence (being itself an on-licence) to sell intoxicating liquor at his off-licensed shop at Brighton, subject to an extra-legal undertaking designed to have the effect that the normal business of the off-licensed shop at Brighton would be conducted during enlarged hours during the Christmas season. The Lord Chief Justice, after reciting these facts, described this as "an astonishing procedure," a description with which few would disagree. Because the grant created a state of affairs which the Divisional Court decided should not be allowed to continue, the court granted its discretionary order of *certiorari*, on the ground that the facts disclosed an abuse of s. 151 of the Customs and Excise Act, 1952, and s. 148 of the Licensing Act, 1953.

In the case outlined by our correspondent the facts are so much weaker that they have little resemblance to the facts in the *Brighton* case. The holder of an on-licence in the licensing district seeks a special order of exemption under s. 107 of the Licensing Act, 1953, which the justices in their discretion are empowered to grant (*see* remarks of Lord Coleridge, C.J., in *Devine* v. *Keeling* (1888) 50 J.P. 551). But the grant will resemble that in the *Brighton* case in that an extra-legal undertaking will be sought that there will be no sales during the extended permitted hours for consumption on the premises : this undertaking, in essence, will convert what is an on- (and "off") licence into an off-licence only.

We incline to think that the Divisional Court would not regard the decision in the *Brighton* case as binding in such circumstances ; but, *ex abundanti cautela*, we recommend that no such undertaking shall be sought. The licence holder will then be left to exercise his personal discretion whether to permit on-sales or not, with an awareness that if the privilege extended to him is abused future applications of the same kind will not be granted.

4.—Lotteries—*Small lotteries.*

The Betting and Lotteries Act, 1934, s. 23 exempts certain small lotteries from the general prohibition of the Act. The exemption applies only to : (s. 23 (3)) . . . bazaars, sales of work, fetes and other entertainments of a similar character.

Is it your opinion that the phrase " or other entertainments of a similar character " would apply to :

(*a*) A dance.

(*b*) A whist drive.

(*c*) A supper-meeting where guests paid for their tickets, entitling them to the meal, which is followed by speeches.

(*d*) A " social " where guests are invited, and pay nothing for admission, but are charged for refreshments, and a prize is raffled to help meet the cost of the entertainment. T. J.C.W.J.

Answer.

Giving the words their ordinary meaning, we do not think it can be said that any of the entertainments is similar to either a bazaar, a sale of work, or a fete. We know of no decision on the point.

5.—Public Health Act, 1936, s. 269—*Movable dwellings.*

In P.P. 12 at 118 J.P.N. 477, you gave your opinion that a licence under s. 269 (1) (i) of the Public Health Act, 1936, authorizing a person to allow land occupied by him to be used as a site for movable dwellings, was personal to the licensee. It appears to me that licences under the subsection cannot, unlike licences under s. 269 (1) (ii), be granted for a temporary period. A licence under s. 269 (1) (i) can, therefore, only operate for the period of the licensee's life. Do you agree?

Answer.

We should rather say " for life if he so long occupies the premises to which the licence relates." We cannot help doubting, however, whether this really is the effect. We discussed this and other difficulties arising under the subsection in an article at 113 J.P.N. 233 and P.P. 7, *ibid.* 258, which was published later than the article but had been answered by post earlier. As a practical course, the council might refuse to issue a licence if the applicant does not himself mention a period in his application, whilst informing him that they are prepared to consider the application afresh if he proposes a time limit. Their refusal will be appealable, but we think they could justify it to the justices on practical grounds.

6.—Rating and Valuation—*Demand note naming last day for payment—Earlier recovery.*

The council issue rate demand notes in May and November of each year, and on the demand note is printed " No other request will be made for payment. In the event of payment not being made by June 30 or December 31 (whichever is appropriate), proceedings will be taken." The council has never taken proceedings before the date which is printed. I shall be glad if you will inform me, whether, when the council have printed what may appear to be the latest date for voluntary payment, proceedings could be taken earlier. The demand note states that rates are payable on demand. CAVEN.

Answer.

In our opinion, the printed statement does not debar the rating authority from earlier proceedings. Obviously, they would incur complaint, and probably adverse comment by the magistrates, if they took proceedings before the stated days without some strong reason on the facts of a particular case.

7.—Rating and Valuation—*Recovery—Deceased ratepayer—Insolvent estate.*

A distress warrant was obtained in respect of unpaid rates against a ratepayer, A, but before the distress was levied A died. The warrant was in the usual form, requiring distress to be made of the goods and chattels of A.

It appears that A died insolvent and that nobody is prepared to obtain a grant of probate or letters of administration.

In these circumstances I shall be pleased to have your opinion whether :

1. The council should, as a creditor, obtain a grant of letters of administration.

2. The word " intestate " in s. 9 of the Administration of Estates Act, 1925, includes not only a person who has died without making a will but also a person who has not appointed executors in his will.

3. In the absence of a legal personal representative, a distress warrant may be issued against the President of the Probate, Divorce, and Admiralty Division if A died intestate within the meaning of s. 9 of the Administration of Estates Act, 1925, in respect of A's estate for :

(*a*) rates due from A before his death ;

(*b*) rates due in respect of the period after A's death in respect of A's property.

4. If the answer to 3 is " Yes," the council would become an executor *de son tort* on executing the distress warrant.

5. Any other means are open to the council to recover the rates which are due in respect of :

(*a*) the period before A's death ;

(*b*) the period after A's death. BLEWS.

Answer.

1. Although this is a possibility, when persons having a higher claim are cleared off, it can hardly ever be sound policy for a rating authority.

2. Yes.

3. Demand can be made upon him, through the registrar, in accordance with the principle of *Stevens* v. *Evans* (1761) 2, Burr 1152, but the vesting of the property in him is purely technical and we doubt whether a distress warrant can issue.

4. Does not arise.

5. Unless some relative or some other creditor will move, and if the treasury solicitor decides not to do so, nothing practical can be done, and the rate should be treated as irrecoverable.

8.—Road Traffic Acts—*Reporting accident—Only one vehicle involved and person injured a passenger in that vehicle.*

I shall be very much obliged if you could assist me in clearing up the following problem in relation to the duty of the driver of a motor vehicle under ss. 22 and 40 of the Road Traffic Act, 1930.

A man is driving a motor car along a main road and as he is approaching a side road which is on his near side he applies his brakes rather violently, causing a child passenger in his car to be thrown against the windscreen and receive a severe wound. The reason he applied his brakes in such a manner was because he saw, over the top of the hedge which obscured the side road, *the top* of a car, and it appeared to him that this car was travelling out of this road into his path on the main road. In actual fact this other vehicle was stationary, the driver sitting in his parked vehicle. The driver of the parked car hearing the application of brakes came out of his car and assisted in dressing the wound of the child. No names and addresses were exchanged nor was the accident reported to the police.

There is a strong opinion that the provisions of ss. 22 and 40 apply in the above circumstances, but I disagree for the following reasons :

1. It seems that it must be assumed that where the only vehicle involved is the driver's own vehicle, s. 22 is applicable to damage or injury to *another* person, not being the driver himself or his passenger, and ;

2. In this case it cannot be held that there were two vehicles involved as it was not *owing to the presence* of the parked vehicle that the accident occurred. In my opinion there is not a sufficient positive relationship between the two vehicles to state that the accident was due to the presence of one vehicle to another. I agree that there need not be an actual collision to bring an incident within the meaning of the word accident, but in this case the accident was due to an error of judgment on the part of the driver and not closely enough related to the other vehicle to state that it was due to its presence on the road, and ;

3. If indeed it could be stretched to the fact that the accident was due to the presence of the parked vehicle, that in itself is not sufficient in this case, as the circumstances must also be qualified by the remainder of the section—that is the duty of the driver to stop and give name and address, etc., to any *person having reasonable grounds for requiring* the same. In my opinion there is no person either *present or absent* who would have reasonable grounds for requiring this information within the meaning of the section. The person injured being in the driver's vehicle and already in possession of those facts, the driver of the parked vehicle by no stretch of imagination could have a reasonable ground for requiring information within the meaning of the section.

I maintain for the above reasons that there was no obligation on the part of the driver of the vehicle (even technically) to report the accident to the police. The police are inclined to interpret these sections far too strictly. The legislation as I see it, both in intention and purpose, requires drivers of motor vehicles to stop and give the necessary particulars when there is damage to persons, vehicles and animals, so that no hardship is caused to any person lacking the necessary information. Therefore if those principles do not apply, there is no obligation at all under the sections. In my opinion the sections not being designed or intended to supply the police or anyone else with information for extraneous purposes, *e.g.*, dangerous driving, obstruction, etc.

It may be that you think that the circumstances outlined are very theoretical, but this is an actual case, and I would appreciate your learned reasoning on the matter. JEWISKE.

Answer.

The accident clearly arose owing to the presence on a road of the vehicle which was being driven on the main road. Neither in s. 22 nor in s. 40 (2) is there any exception when the person injured is a passenger in the vehicle which is so " present." He might, for example, be a casual passenger to whom a lift was being given. He might consider the accident to be due entirely to the driver's fault, and might not wish to continue to travel with him. He would wish then to have the necessary particulars with a view to any proceedings he might wish to take against the driver. We consider, therefore, that so far as the driver of that car is concerned ss. 22 and 40 (2) both apply.

So far as the other vehicle is concerned we do not think that within the meaning of the sections the accident arose owing to the presence of that vehicle on the road.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(Contd.)*

HAMPSHIRE COMBINED PROBATION AREA

Appointment of a Full-time Female Probation Officer

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of a full-time Female Probation Officer for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than March 19, 1955. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Secretary of the Probation Committee.

The Castle,
Winchester.
February 15, 1955.

Amended Advertisement

HAMPSHIRE MAGISTRATES' COURTS COMMITTEE

Christchurch Petty Sessional Division—Male Assistant

APPLICATIONS are invited for the appointment of a whole-time male assistant in the Justices' Clerk's office at Christchurch. Applicants must have experience in general magisterial work and accounts. Shorthand and ability to take depositions on a typewriter desirable. Present salary, according to scale £495 to £545. Post is superannuable.

Applications in own handwriting stating age, qualifications and experience with the names and addresses of three referees to be sent to the Clerk to the Justices, 48b High Street, Lymington, not later than March 7, 1955.

G. A. WHEATLEY,
Clerk of the Committee.

The Castle,
Winchester.

COUNTY BOROUGH OF SOUTHEND-ON-SEA

Assistant Solicitor

APPLICATIONS are invited for the above appointment in the Town Clerk's Department. Salary in accordance with National Scale—£690 × £30—£900 per annum, commencing point to be fixed according to experience. Established post. Medical examination.

Applications, stating age and full particulars of experience, together with names of two referees, should reach the undersigned not later than March 12, 1955.

ARCHIBALD GLEN,
Town Clerk.

COUNTY BOROUGH OF EASTBOURNE

Appointment of First Assistant to the Clerk to the Justices

APPLICATIONS are invited for the above appointment at a salary of £700—£800 per annum, according to experience and ability, and subject to review when National Scales for Justices' Clerks' Assistants have been fixed. Candidates must be efficient shorthand-typists, and thoroughly experienced in all the duties of a Justices' Clerk's Office, including the taking of Depositions and shorthand notes of evidence, conducting Courts, and acting in the absence of the Justices' Clerk. The post is superannuable and the successful applicant will be required to pass a medical examination. Applications, in Candidates' own handwriting, and accompanied by copies of three recent testimonials, should be addressed to the undersigned not later than March 21, 1955.

H. ODELL,
Clerk to the Justices.

Justices' Clerk's Office,
Town Hall,
Eastbourne.

CITY AND COUNTY OF THE CITY OF LINCOLN

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited for this appointment at a salary to be fixed, according to experience, within A.P.T. Grade VI (£860 × £35—£1,000 per annum) of the National Salary Scales. Applicants must possess good experience in conveyancing and advocacy and some local government experience is essential.

The appointment is subject to the provisions of the Local Government Superannuation Acts 1937 to 1953, and the successful candidate will be required to pass a medical examination. Housing accommodation is available.

Further particulars of the appointment may be obtained from me, and applications stating age, qualifications, experience and the names and addresses of three persons to whom reference can be made must reach me not later than March 9, 1955.

Canvassing directly or indirectly will disqualify.

J. HARPER SMITH,
Town Clerk.

Town Clerk's Office,
Lincoln.
February 15, 1955.

INQUIRIES

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS, AND SURVEYORS

CHESHIRE

CHESTER—HARPER, WEBB & CO., Chartered Surveyors, Rating Specialists, 35 White Friars, Chester. Tel. 20685.

CORNWALL

FALMOUTH.—ROWE & KNOWLES, Strand, Falmouth. Tel.: 189 and 1308.

DEVON

AXMINSTER—ARNOLD L. BALDOCK, B.Sc., A.R.I.C.S., Chartered Surveyor, Valuer, Land Agent, Shute, Axminster. Tel. 2388.

EXETER.—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tel. 59378.

EXMOUTH.— PURNELL, DANIELL & MORRELL, 7 Exeter Road. Tel. 3775. Auctioneers and Estate Agents; Surveyors and Valuers. Also at Honiton and Sidmouth.

ESSEX

ILFORD AND ALL ESSEX.—RANDALLS, Chartered Surveyors, Auctioneers, Valuers, 1 Medway Parade, Cranbrook Rd., Ilford. Est. 1884. Tel. ILFord 2201 (3 lines).

GLOUCESTERSHIRE

CIRENCESTER AND COTSWOLDS.—HOBBS & CHAMBERS, F.R.I.C.S., F.A.I., Market Place, Cirencester. (Tel. 62/63) and Faringdon, Berks.

HERTFORDSHIRE

BARNET & DISTRICT.—WHITE, SON & PILL, 13/15 High Street. Tel. 0086, and at New Barnet.

KENT

BECKENHAM—BROMLEY.—SUTCLIFFE, SON & PARTNERS, Estate Agents and Surveyors, The Old Cottage. Estate office, opp. Shortlands Station, Kent. Tel. RAV. 7201/6157. Also at 20 London Road, Bromley. RAV. 0185/7.

EAST KENT.—WORSFOLD & HAYWARD, offices at 3 Market Square, Dover; 11 Queen Street, Deal; 4 St. Margaret's Street, Canterbury. Established 1835.

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